

EXHIBIT 2b

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11
12 ARNOLD LEONG,

13 Plaintiff,

14 v.

15 WARREN HAVENS, et al.

16 Defendants.

Case No.: 2002-070640

**DEFENDANT WARREN HAVENS'
NOTICE OF MOTION AND MOTION
TO TERMINATE RECEIVERSHIP;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

**DATE: September 13, 2016
TIME: 3:45 p.m.
DEPT: 24 (Hon. Frank Roesch)
RESERVATION NO.: R-1764700**

ENDORSED
FILED
ALAMEDA COUNTY

AUG 19 2016

CLERK OF THE SUPERIOR COURT
By [Signature]
JANNE THOMAS, Deputy

By Fax

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1 TO: ALL PARTIES AND THEIR ATTORNEYS:
2 PLEASE TAKE NOTICE that on September 13, 2016 at 3:45 p.m. or as soon thereafter
3 as this matter may be heard, in Department 24 of the above-entitled court, located at
4 Administration Building, 1221 Oak Street, Oakland, California, defendant Warren Havens will
5 move and does hereby move pursuant to Code of Civil Procedure § 564 to terminate the
6 receivership created on November 16, 2015, in its entirety, and to terminate the services of the
7 Receiver. In the alternative, Havens moves to terminate the Receivership as to Skybridge
8 Spectrum Foundation.

9 This motion is made on the following grounds: (1) The receivership is not serving its
10 intended purpose of preserving the assets of the receivership entities during the pendency of this
11 matter; (2) As evidenced by those transactions which the receiver proposes to enter into, the
12 receivership has and continues to result in a depreciation of value of the assets of the
13 receivership entities that is presently in excess of 75%; (3) rather than try to remove the
14 perceived cloud improperly placed on the receivership's assets by the erroneous Sippel Order,
15 the receiver has encouraged and caused the FCC to indefinitely preserve the perceived cloud;
16 (4) the receiver has been careless, and in some cases, reckless, in neglecting her duty to protect
17 and preserve the licenses.

18 As to Skybridge, this alternative motion is made on the ground that plaintiff Leong
19 cannot have any interest in Skybridge, just as Havens has no interest in Skybridge because it is
20 a tax exempt charitable foundation under IRC §501(c)(3) and is subject to the oversight of the
21 California Attorney General. Leong consented in writing to the donation of spectrum to
22 Skybridge, and therefore has no right, and never did, to insist upon a receivership for Skybridge.

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1 This motion is based on this notice, the accompanying memorandum of points and
2 authorities, the declarations of Warren Havens, the pleadings and papers on file and upon such
3 other and further evidence and argument as may be presented.

4 DATED: August 19, 2016

5 BULLIVANT HOUSER BAILEY PC

6
7 By 

8 Andrew B. Downs

C. Todd Norris

9 Norman J. Ronneberg, Jr.

10 Attorneys for Defendant Warren Havens
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Warren Havens moves to terminate the receivership over Verde Systems
4 LLC, Telesaurus GB LLC, Environmental LLC, Environmental 2, LLC, Intelligent
5 Transportation and Monitoring Wireless LLC, Skybridge Spectrum Foundation, Atlis, LLC, and
6 V2G LLC (collectively, the “receivership entities”).

7 Havens primarily moves to terminate the receivership for the simple reason that it isn’t
8 working and can’t work in the future. To the contrary, the receivership is resulting in significant
9 depreciation of the value of the assets held by the receivership entities and threatens the ability
10 of the entities to maintain their licenses. Moreover, rather than attempt to cure the perceived
11 problem posed by the Sippel Order, the receiver has merely asked the FCC to preserve the
12 perceived problem indefinitely by “staying” FCC action on the Sippel Order. Finally, the
13 receiver has been careless in carrying out her duty to protect the licenses by: (a) abandoning any
14 attempt to have the Sippel Order overturned; (b) taking positions in public filings in support of
15 the Judge Sippel’s erroneous assertions (which were not based on a contested hearing, but rather
16 asserted by Judge Sippel without giving Havens notice and opportunity to respond to those
17 assertions), thereby lending her support to the very Order the Receiver was appointed to protect
18 the receivership entities from; (c) undercutting license extension renewals by refusing to
19 continue license protection development activities; (d) jeopardizing the critically important
20 nonprofit/charitable foundation status of Skybridge by comingling its funds and business
21 activities with those of the LLC’s and attempting to use its assets and funds for the benefit of
22 private interests; (e) proposing to enter into settlements that are not just objectively
23 unreasonable and grossly unfair to the receivership entities, but which constitute total “give
24 away” of valuable rights and consideration that the opposing parties could not possibly have
25 obtained without a settlement.

26 As the Court is aware, the primary assets of the receivership entities are wireless licenses
27 issued to the entities by the Federal Communications Commission. Those licenses exist by
28 virtue of decisions made by the FCC, and they may have their value destroyed by virtue of other

1 decisions that could be made by the FCC. While the risk of adverse action by the FCC can
2 never be eliminated, not all risks are equal in terms of severity and probability. This
3 receivership was created in an attempt to reduce the probability of an already improbable risk of
4 high severity – the risk that the FCC might find the receivership entities lacked the necessary
5 character to hold FCC licenses. In exchange for what is, at best, an insignificant reduction in
6 the probability of an already improbable event, the creation of the receivership, and the post-
7 appointment decisions of the Receiver have created real and substantial risks that a significant
8 number of the FCC licenses will be terminated. In addition, the Receiver’s attempts to market
9 those licenses have resulted in grossly and unconscionably below market offers, thereby proving
10 that the receivership is having the opposite effect of its intended purpose.

11 The solution to this problem is to terminate the receivership and put the parties back in
12 the position they occupied on November 15, 2015, less of course, the millions spent by the
13 Receiver during her relatively brief tenure.¹

14 **II. FACTUAL BACKGROUND**

15 **A. Leong’s Unicorn: The Non-Existent Risk of a Hearing Determination Order**

16 More than a year ago, on May 19, 2015, Leong rushed into court *ex parte* on less than 24
17 hours’ notice, and asked the court to put the Havens-controlled entities into receivership. His
18 primary ground for seeking a receivership was the issuance of an order by an FCC
19 Administrative Law Judge certifying to the FCC for a determination whether a separate
20 proceeding should be designated to determine whether Havens and the Havens-controlled
21 entities qualified to hold FCC licenses (Exhibit 1 to Request for Judicial Notice filed May 19,
22 2015, colloquially known as the “Sippel Order”). In his brief, Leong argued:

23 The only option to preserve the value is to remove Havens from
24 control to mitigate the issue of his character. This must be done
25 *now*, before the FCC formally places Havens’ character in issue
26 via a "hearing designation order" - *which could occur literally any day* - an event that would attach to Leong’s interest in the licenses
notwithstanding his innocence in Havens’ conduct before the

27 ¹ The Court has the ability under Code of Civil Procedure §664 to direct that Leong pay the
28 expenses of the receivership, which he imprudently asked the court to impose, and Havens
requests that the Court make such an order. See, *Andrade v. Andrade* (1932) 216 Cal. 108, 110,
13 P.2d 676.

1 FCC.
2 Memorandum in Support, Filed May 19, 2015, 2:17-3:1 (emphasis in original) (**Exhibit H** to
3 Haven's Request for Judicial Notice (RFJN).
4 Despite counsel's breathless argument regarding the immanency of adverse FCC action,
5 nothing of the sort ever happened. More than 450 days have passed since Leong first sought
6 appointment of a receiver. More than 475 days have passed since the Sippel Order was entered.
7 This court placed the entities into receivership 181 days (6 months) after Leong first moved for
8 appointment of a receiver. Another 123 days passed (for a total of 331 days from the Sippel
9 Order) before the Receiver asked the FCC to stay its consideration of Havens' interlocutory
10 appeal of the Sippel Order.

11 Havens has filed a well-briefed and well-founded appeal of the Sippel Order, copies of
12 which are attached as **Exhibits A and B** to Haven's Request for Judicial Notice. As argued in
13 the appeal, regardless of whether Judge Sippel's pique directed at Havens was justified, the
14 Sippel Order suffers from a fatal procedural defect which makes it jurisdictionally impossible
15 for the FCC to ever issue the dreaded Hearing Designation Order regarding Havens or the
16 receivership entities.

17 **B. The Only Clear and Present Danger: Receiver's Failure to Use Available**
18 **Tools**

19 The Receiver has expressed to the Court repeatedly her fear that licenses with 2015 or
20 2016 renewal dates will be terminated due to a perceived failure to satisfy the substantial service
21 requirements associated with *some* of those licenses. But, much as a man who manufactures
22 hammers wants to use a hammer as his only tool, the Receiver's only solution has been to sell
23 licenses wholesale, a "solution" this Court wisely rejected because an impending sale is not
24 grounds for renewal. 47 CFR Section 1.946(e)(3). The Receiver has failed to implement other
25 tried and proven tools to preserve the licenses:

- 26 • Seeking additional time due to the imposition of the receivership, something
27 treated favorably by the FCC on other occasions. Order and Order on
28 Reconsideration, released April 29, 2016, DA 16-469 (granting certain waiver

1 requests by William M. Holland, a Court-Appointed Receiver, to allow
2 additional time to construct certain licenses, 31 FCC Rcd 3920. Havens Decl. at
3 ¶¶33-34, and **Exhibit 8** thereto.

- 4 • Continuing the research and development used by Havens to support prior
5 applications, ones this Court noted were “cogent” on their face.² Havens Decl. at
6 ¶¶35-36. Instead, in public filings, she has disparaged the very justification the
7 entities have used for pre-receivership renewal applications, something that does
8 not improve the prospects for renewal.³
- 9 • Exercising the license holder options to use a five-year period, rather than a
10 three-year period for substantial service deadlines on other licenses.

11 The Receiver has also failed, on multiple occasions, to recognize that the FCC approved
12 Havens’ partition and disaggregation strategy, thus freeing many of the licenses held by entities
13 other than Skybridge, from any substantial service requirement. Havens Decl. at ¶¶37. For
14 example, she has argued that licenses held with no substantial service (colloquially
15 “construction”) deadlines are at risk of non-renewal. Compare Weimer declaration (**Exhibit D**
16 to RFJN, pg. 9, and Exhibit 1 thereto) to that declaration in support of the Receiver’s motion for
17 authority to sell AMTS licenses, with Exhibit 1 to Mr. Havens’ declaration in opposition to that
18 motion. (**Exhibit E** to RFJN, and Exhibit 1 thereto)

19 It’s not the Receiver’s position to determine whether Havens is good or bad, or whether
20 a more conservative, less entrepreneurial businessperson who would have made different
21 decisions is a better steward of the entities Havens created and grew into entities that both
22 parties agree were worth hundreds of millions of dollars, just prior to entry of the receivership
23 order. But, that’s what she, through her lawyers has and continues to do, disparaging Havens’
24 business strategies repeatedly based on her “prefer[ence]” to go a different route.⁴ The Receiver

25 _____
26 ² Transcript, June 30, 2016 25:18-19.

27 ³ Receiver’s Objection to Turnover Motion in the Skybridge Bankruptcy, ¶¶ 87-88 (**Exhibit C**
to RFJN)

28 ⁴ In the Receiver’s own words: “The main difference between [the Receiver’s] approach to
asset preservation and Debtor’s is the tolerance of risk. She perceives that there are great risks

1 is certainly entitled to her own opinions, but she should not be expressing those opinions in
2 public filings that undercut the very arguments the receivership entities have made to the FCC in
3 connection with pending applications and proceedings. To do so undercuts the credibility of the
4 entities. The FCC doesn't have a "never mind" procedure under which a licensee can change
5 the grounds for an application because the licensee has decided to abandon those grounds in
6 favor of a different strategy.

7 **C. Fire Sale: The Receiver's Reckless Licensing Negotiations**

8 The Receiver has presented three proposed licensing sales or leases to the parties. Two
9 of those three are transactions on which Havens was working before the entities were placed
10 into receivership. The Receiver's proposed "deal points" for these transactions are attached as
11 **Exhibits 4, 5 and 6.** For the reasons explained in Mr. Havens' Declaration at ¶¶ 6 to 32, the
12 proposed prices to be paid to the receivership entities are orders of magnitude smaller than their
13 admitted pre-receivership value, ranging from as much as 60 times lower to as much as 1,500
14 times lower than the estimated pre-receivership values. Havens Decl. at ¶¶ 6 to 32. Defendant
15 Havens respectfully requests an evidentiary hearing on the matters discussed in paragraphs 6 to
16 28 of his declaration because those facts are critical to an understanding of the devastating harm
17 the receivership has and continues to do to the value of the licenses.

18 Havens submits there are only two reasons for the Receiver to negotiate such grossly
19 inadequate sales prices. One is that she and her advisors simply do not know the market and
20 thus are disregarding the valuations agreed upon by both Leong (see Musey declaration filed
21 July 7, 2015) and Havens. The other is the existence of the receivership is leading "would-be-
22 buyers" of spectrum to low ball their offers, and because she feels a need to make sales, the
23 Receiver is unwilling to say "no" and to use what leverage she has to negotiate a commercially
24 reasonable price.

25 Whether it's the Receiver's conduct or her existence, the evidence shows the

26
27 to the continued existence of the license assets if [Skybridge] follows its preferred course of
28 action . . . The Receiver prefers to minimize the risks to the assets by working with the FCC
and, as appropriate, monetizing some of those assets in order to preserve their value." *Id.* at ¶45.

1 receivership is harming the value of the primary assets of these businesses. None of the parties
2 benefit from the existence of the receivership in these circumstances.

3 As this motion was being drafted, the receiver's counsel sent an email to the parties'
4 counsel (**Exhibit 7** to the Havens Decl.) in which the Receiver's counsel stated that the receiver
5 did not intend to proceed with the PCS Partners transaction (discussed in the Havens Decl. at
6 ¶¶13 to 17) "given the negative feedback" she received after providing the term sheet to the
7 parties. Havens had submitted comments to the receiver explaining why her proposed deal
8 would result in grossly undervalued sale prices. The Receiver's withdrawal of the deal she
9 intended to have approved by this Court demonstrates that she and her advisors do not know the
10 market they are proposing to sell in, or in the alternative, that the receivership has so damaged
11 the value of the licenses as to justify termination of the receivership, so that the damage can be
12 mitigated and to some degree reversed.

13 **D. The Receiver Has Improperly Taken Leong's Side In Public Filings And**
14 **Has Argued Positions That Support the Sippel Order To The Detriment of**
The Entities She Was Appointed to Protect

15 In addition to the unconscionable losses the receivership has and continues to cause to
16 the value of the licenses (as detailed in the Havens Decl.), rather than support defendant
17 Havens' efforts to challenge the Sippel Order (which started all of this), the Receiver effectively
18 abandoned any challenge to the Sippel Order and declined to take a position on it, instead
19 simply asking the FCC to "stay" a non-existent HDO, thereby leaving intact the perceived cloud
20 presented by the Sippel Order to hang over the entities indefinitely. Havens Decl. at ¶¶41 to 42.
21 If that were not enough, the Receiver then urged in public filings that Judge Sippel's accusations
22 against the entities' controlling owner were all true. Receiver's Objections to Turnover Motion
23 in Skybridge Bankruptcy, ¶¶87-88, **Exhibit C** to RFJN.

24 Regardless of the private views of the Receiver and her counsel regarding the merits of
25 the Sippel Order, if Leong is correct that the Sippel Order creates a risk of harm to the entities, it
26 is incumbent upon the Receiver and her counsel to act in a manner that preserves the entities'
27 defenses against issuance of a Hearing Designation Order and, if one is issued, against an
28 adverse finding regarding their character. Instead of doing that, the Receiver filed a brief in the

1 Skybridge Bankruptcy which largely adopted the position taken by Judge Sippel in his order.
2 Receiver's Objection to Turnover Motion in Skybridge Bankruptcy, ¶¶ 87-88, **Exhibit C** to
3 RFJN.

4 In her public filings, the Receiver improperly took both Judge Sippel's and Leong's side
5 by urging as follows:

6 Since her appointment, the Receiver has been engaged in constant
7 damage control, attempting to correct actions from Havens that
8 threatened the value of and risked forfeiture of the Licenses that
9 are the primary assets held by the entities subject to the
10 Receivership (the "Receivership Entities"). The actions that
11 culminated in the April 2015 order (known as the "Sippel Order,"
12 after FCC Administrative Law Judge Richard L. Sippel, who
13 issued it), are an example of a lengthy course of conduct that has
14 led to Havens' being sanctioned by various courts and the FCC.

15 * * * *

16 Havens has also:

17 (a) failed to comply with construction or service deadlines with
18 respect to many of the Licenses, resulting in cancellation of
19 valuable spectrum licenses by the FCC;

20 (b) failed to file Debtor's tax returns or pay taxes for certain
21 Receivership Entities;

22 (c) failed to properly maintain the Receivership Entities' and the
23 Debtor's books and records;

24 (d) engaged in highly questionable allocations of costs and assets
25 between the Debtor and the other Receivership Entities;

26 (e) distributed \$1.25 million of cash to himself as "deferred
27 salary" on the eve of a hearing in Alameda Superior Court on a
28 motion to impose a receivership, based on his own formula; and

(f) lost hundreds of FCC licenses due to his failure to comply with
FCC deadlines after arguments similar to those he makes now
were rejected by the FCC.

Id. at pp. 2-3, **Exhibit C** to RFJN.

25 As discussed above, the probability of a Hearing Designation Order being issued is
26 extremely low. But, a supposed "neutral" Receiver whose appointment was intended to protect
27 against such an eventuality should not be taking positions in public proceedings to which the
28 FCC was a party, that support the positions taken in the Sippel Order, which in any event, are

1 not established “facts” as Havens was never provided with any notice or opportunity to contest
2 the Sippel assertions, which were first responded to by Havens in his motion for reconsideration
3 and appeal of the Sippel Order, *both of which are still pending*.

4 **E. Attempting to Destroy Skybridge**

5 Skybridge, on paper and in reality, is an operating charitable foundation. Bolotnick
6 Affidavit at ¶¶2 -6, Exhibit G to RFJN. While Havens is its President, he has no interest in it,
7 just as Leong has no interest. *Id.* at ¶6. Years ago, with Leong’s written consent (**Exhibit 9** to
8 Havens Decl.), various of the receivership entities donated portions of the spectrum held by
9 them to Skybridge. As a charitable foundation, Skybridge is subject to the supervision of the
10 California Attorney General. Havens takes no salary from Skybridge and never has. Bolotnick
11 Affidavit at ¶7. Any right Leong has to seek receivership of any of the entities is wholly
12 derivative of his alleged interest in those entities. Because as a matter of law, Leong can have
13 no interest in Skybridge, he cannot seek to have it placed into receivership.

14 Contrary to the Receiver’s contentions some months ago, made and incorrectly repeated
15 in public filings by the Receiver, there has never been a valid termination of Skybridge’s tax-
16 exempt status.⁵ But, in complete disregard for Skybridge’s status, the Receiver has comingled
17 funds and attempted to sell the assets necessary to its operating and charitable nature for
18 purposes of paying the other entities’ debts and obligations, as evidenced in other motions filed
19 herein. Havens Decl. at ¶36.

20 **F. The Receiver Attempted to Enter Into An Unreasonable Settlement With**
21 **Puget Sound Energy That Constituted Inappropriate “Give Aways” of**
22 **Valuable Rights Held By the Receivership Entities**

23 This Court is already familiar with the Receiver’s imprudent proposed settlement with
24 Puget Sound Energy in which the Receiver attempted to give away rights (worth as much as
25 nine figures) to PSE and to a third party MCLM, rights that the court in that lawsuit never could

26 ⁵ Internal communication at the IRS leaves something to be desired and there have been
27 occasions where the tax-exemption has purportedly been terminated despite the fact that
28 Skybridge held valid extensions of time from the IRS to file tax returns. In each instance once
proof of the valid extension was provided, the revocation of tax-exempt status was rescinded.
Havens Decl. at ¶40.

1 have awarded PSE, much less MCLM, a non-party to the lawsuit. Havens will not repeat here
2 his arguments concerning the Receiver's proposed reckless settlement with PSE, but instead
3 refers the court to his Opposition to the Receiver's Motion to Approve the Settlement and
4 Haven's supporting declaration, filed herein on June 15, 2016. As the court will recall, there
5 were serious questions raised concerning valuable rights the Receiver proposed giving away for
6 nothing, rights that PSE could not have obtained from the Court or under the applicable
7 contract. Accordingly, the Court denied the Receiver's motion to approve that settlement. The
8 Receiver has yet to propose an adequate alternative settlement, instead further proposing a
9 settlement that failed to cure any of the problems with the original proposed settlement. Havens
10 objected and the Receiver has made no further proposal.

11 **III. THE RECEIVERSHIP SHOULD BE TERMINATED**

12 **A. Application of Delaware Law**

13 The Limited Liability Company agreements of Telesaurus and Verde provide for the
14 exclusive applicability of Delaware law, and indeed state broadly that "all disputes" are to be
15 "governed by and construed in accordance with the Act and other laws of the State of
16 Delaware." Such broad choice of law provisions include a foreign state's procedural rules, as
17 well as its substantive law. *Hambrecht & Quist Venture Partners v. American Medical Intl. Inc.*
18 (1996) 38 Cal.App.4th 1532, 1542. In Delaware, a petitioner's initial verified demand for a
19 receiver goes forward in a sort of summary judgment procedure, and a receiver will never be
20 appointed if the facts presented at the summary judgment hearing are (as in our case) vigorously
21 disputed or incomplete. *Banet et al. v. Fonds de Regulation* (Del. Ch. 2009) 2009 WL 529207,
22 *1, 3-4.6 Furthermore, at the initial receivership hearing "all evidence offered by the non-
23 moving party is still to be viewed in the light most favorable to the non-moving party." (*Id.* at
24 *3). Where vigorously disputed facts do exist, a trial takes place---with express findings of fact
25 and conclusions of law – before a receiver is appointed. (*Id.*). See *Carlson v. Hallinan* (Del.

26
27 ⁶ The Delaware Supreme Court and the Court of Chancery routinely cite cases published only in
28 Westlaw, an accepted practice in Delaware. See, *Seneca Investments v. Tierney* (Del. Ch. 2008)
970 A.2d 259 n. 13, *et seq.*

1 Ch. 2006) 925 A.2d 506, 544 and *Hall v. John S. Isaacs & Sons Farms Inc.* (Del. Ch. 1960) 163
2 A.2d 288, 293. Because the foregoing did not occur, it is appropriate to terminate this
3 receivership.

4 In any event, as explained below, even if more lenient California standards are applied,
5 the receivership should still be terminated for practical reasons.

6 **B. The Court Has the Discretion to Terminate the Receivership**

7 Having created the receivership, the Court has the discretion to terminate it. Code of
8 Civil Procedure §564; *Hanno v. Superior Court* (1939) 30 Cal.App.2d 639, 640-41, 87 P.2d 50;
9 *Sly v. Superior Court* (1925) 71 Cal.App. 290, 294, 235 P. 83.

10 **C. Termination is Necessary When the receivership Ceases to Serve its**
11 **Purpose.**

12 Civil Code §3510 provides “When the reason of a rule ceases, so should the rule itself.”

13 [R]eivership is an extraordinary remedy, to be applied with
14 caution and only in cases of apparent necessity, and where other
remedies would be inadequate. *Rogers v. Smith* (1946) 76
Cal.App.2d 16, 21, 172 P.2d 365, 368.

15 It follows that a receivership which is not necessary and/or which is not curing the problem it
16 was intended to address, should be terminated. See, *Mitchell v. Lay* (9th Cir. 1932) 60 F.2d 941,
17 943; *Sly, supra* 71 Cal.App. at 293-94.⁷

18 **D. This Receivership Does Not Serve Its Intended Purpose**

19 Taking Leong’s original application at face value, the purpose of the receivership is to
20 preserve the value of the entities against the “any day now” threat posed by the Sippel Order.
21 Upon reflection, it’s apparent that the threat posed by the Sippel Order is anything but
22 immediate and more theoretical than real. In contrast, the threat posed by a continued
23 receivership is immediate and concrete: (a) Sales of valuable assets at fire sale prices; (b)
24 abandonment of the activities needed to support an extension of substantial service deadlines;
25 (c) the attempted abandonment of valuable claims to spectrum for no consideration; (d) the de
26

27 ⁷ Denying writ of prohibition to preclude Superior Court from terminating receivership where
28 evidence did not establish necessity of continuing receivership and that continuation of
receivership would not cause an injustice.

1 facto destruction of an operating tax exempt charitable foundation; and (e) The expenditure of
2 six digit sums of money every month on the Receiver and her attorneys.

3 The solution to this predicament is simple – terminate the receivership and restore the
4 parties to the organizational status quo as of November 15, 2015.

5 **IV. IN THE ALTERNATIVE, TERMINATE THE RECEIVERSHIP AS TO**
6 **SKYBRIDGE**

7 Skybridge is different. It's a private charitable operating foundation. *See*, Probate Code
8 §16100. As such its assets are unlike the assets of the other receivership entities. Its assets
9 cannot be distributed for private gain, only to another charitable trust or foundation. *In Re*
10 *Veterans' Industries* (1970) 8 Cal.App.3d 902, 917-18, 88 Cal.Rptr. 303; *See also*, Bolotnick
11 Aff. at ¶6, Exhibit G to RFJN.. Individuals such as Havens, as well as the Attorney General
12 may bring an action to remedy a breach of the charitable trust. Corporations Code §7142.

13 In these circumstances, continued maintenance of the receivership over Skybridge, at
14 Leong's instigation, is improper. The receivership over Skybridge should be terminated
15 regardless of how the Court rules in connection with the for profit entities.

16
17 **V. LEONG, HAVING MISLED THE COURT INTO GRANTING A DESTRUCTIVE**
18 **RECEIVERSHIP, SHOULD REIMBURSE THE ENTITIES FOR THE**
19 **ADMINISTRATIVE COSTS ASSOCIATED WITH THE RECEIVERSHIP**

20 Normally the administrative costs of a receivership, including the fees of a receiver and
21 her attorneys are paid out of the assets held in the receivership. The court, however, retains the
22 equitable power to allocate those expenses differently. This is a case where it should allocate
23 100% of those expenses to Leong. Why? Because this unnecessary Receivership was Leong's
24 idea and a mere pretext for Leong to sidestep the parties' arbitration in an effort to get this court
25 to liquidate the companies, something he was unsuccessful in accomplishing in the arbitration to
26 which he agreed.⁸ It was Leong who, following the adage "Never let a good crisis go to waste,"

27 ⁸ It should be noted that to the extent the Receiver or the court turns this receivership into a
28 liquidation receivership, as distinct from a "status quo" receivership, it is a direct violation of
Section 9.4 of the parties' LLC agreements, which explicitly authorize only a "status quo"
receivership.

1 urged the appointment of a receiver in what was a callous attempt to decapitate Havens' position
2 in the arbitration which otherwise was not going the way Leong wanted.⁹ Well over \$1,000,000
3 later, the receivership entities are in much worse condition than they were on May 18, 2015, the
4 day before Leong first presented his application for appointment of a receiver. In these
5 circumstances, equity demands that Leong reimburse the entities for the administrative costs of
6 the receivership and that the Receiver's promissory notes to Leong be cancelled.

7 **VI. CONCLUSION**

8 Regardless of whether the original decision to place the entities into receivership was
9 prudent or not at the time it was made, subsequent events have shown the receivership is
10 causing much greater harm than good. In addition, the risk presented by the Sippel Order is
11 ever more remote and improbable than represented originally. In these circumstances, there is
12 no longer any need for the receivership, if ever there had been. It should therefore be
13 terminated.

14 In the alternative, at a minimum, the receivership over Skybridge should be terminated
15 because Leong cannot even state a colorable interest in Skybridge, a charitable foundation to
16 which he agreed to donate spectrum.

17 ///

18 ///

19 ///

20 ///

21 ///

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23 ///

24

25 ⁹ Havens understands this is not the place to argue whether the receivership should have been
26 entered in the first instance. However, it bears mentioning in hindsight that the receivership has
27 in fact totally interfered with the parties' arbitration, delaying it by almost another year when it
28 had been on course to be completed at the end of last year. Because federally issues FCC
licenses are at the heart of the dispute, the Federal Arbitration Act governs, and to the extent
California's Receivership Statute interferes, as it has here, with the parties' arbitration, it is
preempted by the FAA. *DirectTV, Inc. v. Imburgia*, 136 S.Ct. 463 (2015).

1 Defendant Warren Havens respectfully requests that this motion be granted, an order be
2 entered terminating the receivership and that plaintiff Arnold Leong be ordered to reimburse the
3 receivership entities for the administrative costs of the receivership, including those not yet
4 approved by the Court.

5 DATED: August 19, 2016

6 BULLIVANT HOUSER BAILEY PC

7
8 By 

Andrew B. Downs

C. Todd Norris

Norman J. Ronneberg, Jr.

9
10 Attorneys for Defendant Warren Havens

11
12 4812-3836-4726.1

13 *****

PROOF OF SERVICE
Arnold Leong v. Warren Havens, et al.
Alameda Superior Court No. 2002-070640

I am employed in the City and County of San Francisco by the law firm of Bullivant Houser Bailey ("the business"), 235 Pine Street, Suite 1500, San Francisco, CA 94104. I am over the age of eighteen (18) and not a party to this action. On August 19, 2016, I served the document entitled:

**DEFENDANT WARREN HAVENS' NOTICE OF MOTION AND
MOTION TO TERMINATE RECEIVERSHIP; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF**

upon the following parties:

PAUL F. KIRSCH
JAMES M. ROBINSON
Shoppoff Cavallo & Kirsch LLP
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San Francisco, CA 94111
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ddegroot@sheppardmullin.com
Attorneys for: Receiver SUSAN UECKER

- () **BY MAIL (CCP §1013(a)):** I am readily familiar with the ordinary practice of the business with respect to the collection and processing of correspondence for mailing with the United States Postal Service. I placed a true and correct copy of the above-titled document in an envelope addressed as above, with first class postage thereon fully prepaid. I sealed the aforesaid envelope and placed it for collection and mailing by the United States Postal Service in accordance with the ordinary practice of the business. Correspondence so placed is ordinarily deposited by the business with the United States Postal Service on the same day.
- () **BY ELECTRONIC TRANSFER:** I caused all of the pages of the above-entitled document to be sent to the recipient indicated via email at the respective email addresses. This document was transmitted by email and transmission reported without error.
- () **BY FACSIMILE TRANSMISSION (CCP §1013(e), CRC 2.306):** I transmitted the document by facsimile transmission by placing it in a facsimile machine (telephone number 415-352-2701) and transmitting it to the facsimile machine telephone number listed above. A transmission report was properly issued by the transmitting facsimile

1 machine. The transmission was reported as complete and without error. A true and correct
2 copy of the transmission report is attached hereto.

3 () **BY OVERNIGHT DELIVERY (CCP §1013(c))**: I am readily familiar with the ordinary
4 practice of the business with respect to the collection and processing of correspondence
5 for mailing by Express Mail and other carriers providing for overnight delivery. I placed
6 a true and correct copy of the above-titled document in an envelope addressed as above,
with first class postage thereon fully prepaid. I sealed the aforesaid envelope and placed
it for collection and mailing by Express Mail or other carrier for overnight delivery in
accordance with the ordinary practice of the business. Correspondence so placed is
ordinarily deposited by the business with Express Mail or other carrier on the same day.

7 () **BY PERSONAL SERVICE UPON AN ATTORNEY (CCP §1011(a))**: I placed a true
8 and correct copy of the above-titled document in a sealed envelope addressed as indicated
9 above. I delivered said envelopes by hand to a receptionist or a person authorized to accept
same at the address on the envelope, or, if no person was present, by leaving the envelope
in a conspicuous place in the office between the hours of nine in the morning and five in
the afternoon.

10 (x) **BY HAND**: Pursuant to Code of Civil Procedure §1011, I directed said envelope to the
11 party so designated on the service list to be delivered by courier this date. A proof of
12 service by hand executed by the courier shall be filed/lodged with the court under separate
cover.

13 () **BY PERSONAL SERVICE UPON A PARTY (CCP §1011(b))**: I placed a true and
14 correct copy of the above-titled document in a sealed envelope addressed as indicated
15 above. I delivered each envelope by hand to a person of not less than eighteen (18) years
of age at the address listed on the envelope, between the hours of eight in the morning and
six in the evening.

16 I declare under penalty of perjury, under the laws of the State of California, that the
17 foregoing is true and correct.

18 Executed on August 19, 2016, at San Francisco, California.

19 
20 ROBERTA C. BEACH

21 *****

The following document is a partially redacted document, pursuant to a motion by Receiver Susan Uecker, which the state court granted.

Items redacted were not earlier marked by the Receiver or others as confidential or privileged, in communications provided to me, and appear to be known to third parties whose obligations, if any, to protect the information is not known to me to this time. - W. Havens

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2 C. Todd Norris, SBN 181337
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12 Attorneys for Defendant
13 WARREN HAVENS

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA

16 ARNOLD LEONG,

17 Plaintiff,

18 v.

19 WARREN HAVENS, et al.

20 Defendants.

Case No.: 2002-070640

Public-Redacts materials from conditionally sealed record

**DECLARATION OF WARREN HAVENS
IN SUPPORT OF MOTION TO
TERMINATE RECEIVERSHIP**

DATE: September 13, 2016

TIME: 3:45 p.m.

DEPT: 24 (Hon. Frank Roesch)

RESERVATION NO.: R-1764700

21 I, Warren Havens, declare:

22 1. I am the defendant in this action and am the sole managing member of each of
23 the Limited Liability Companies that are the subject of the Leong receivership. Prior to the
24 appointment of the receiver, I was the manager of each of the companies throughout their
25 existence. I am also the President and Director of Skybridge Spectrum Foundation, the non-
26 profit private operating tax exempt foundation, also the subject of the receivership. Prior to the
27 appointment of the receiver, I was the only person to have served as President and Director of
28 Skybridge.¹ I have personal knowledge of the facts stated below and I could so testify.

¹ However, the modified Receivership Order authorizes me to act for the receivership entities in the arbitration.

The Entities' Innovative Business Plan

1
2 2. The business of the receivership entities is the acquisition, development and
3 eventual deployment of their FCC wireless licenses for advanced wireless data technologies in
4 the PNT (precise positioning, navigation, and timing) area and other wide area mission critical
5 applications, including what are known as AMTS (Automated Maritime Telecommunications
6 Systems) licenses, and what are known as LMS (Location and Monitoring Service) licenses.
7 This is a highly specialized field where only a handful of businesses compete. Our long term
8 goal is to build and deploy an advanced wireless communication and technology system that
9 provides new capabilities for precise position technology (correcting flaws in current technology
10 that, among other problems, impede important advances in private and public transportation
11 and safety), navigation and timing, intelligent transportation, the energy industry (including
12 "smart grid" and other "smart" energy uses), forestry, mining, environmental monitoring and
13 public safety, and scientific research in remote areas.

14 3. As discussed in a more detailed declaration filed herein on June 17, 2016 (re:
15 Receiver's Request for Instructions Regarding AMTS Spectrum), the development of this
16 spectrum has taken years of diligent and tenacious perseverance. Not only did we need to
17 acquire nationwide collections of FCC licenses, but we also needed to meticulously work on
18 clearing numerous encumbrances fraudulently created by other license holders who falsely
19 alleged rights to spectrum in major geographic areas, encumbrances that would have caused
20 critical interferences with our planned uses. We were only recently successful in clearing off
21 those bogus encumbrances and defeating proposed FCC rule changes that would have interfered
22 with the entities' business plans.

23 4. Thus, when this receivership began, the entities had only just completed "Phase
24 I" of their common business plan to obtain three nationwide collections of unencumbered radio-
25 spectrum licenses. The entities were proceeding well into Phase II of their plans, to firm up
26 plans and arrangements to deploy valuable and highly practical uses of those licenses, uses that
27 will have incredible safety and efficiency benefits for the public, if the court allows the entities
28 to proceed with their plans. As explained below, among other harms, the receivership has

1 brought the entities' Phase II plans to a grinding halt, threatening the entities' ability to maintain
2 their licenses, causing unconscionable losses to the value of those licenses, as evidenced by the
3 receiver's proposed grossly below market sales, and preventing the entities or anyone else from
4 implementing the plans that would be highly beneficial to the public as well as the entities
5 themselves.

6 **The Motive Behind The Leong Receivership**

7 5. In bringing this motion to terminate the receivership, it is appropriate to recall
8 that plaintiff Leong does not care about the public interest at stake or maintaining the value of
9 the assets held by the receivership entities. He seeks only to make good on a threat: "If we get
10 into this fight, I will do so without fear of self destruction of this business . . ." Separately, he
11 threatened, "[A]s we wrestle for control, this car will go over a cliff, crash and burn. Any funds
12 that you might have thought should go into the partnership will instead be used for funding my
13 litigation against you. . . . I'll be disappointed, but financially I'll be able to walk away from this
14 wreck." Leong sent those malicious emails years ago, and ever since, he has doggedly
15 attempted to make good on those threats. He evidently hoped the receivership would be the
16 vehicle through which the entities would finally "crash and burn." (The emails are attached as
17 Exhibits B and C to my prior declaration, filed herein on May 22, 2015)

18 **The Leong Receivership's Dramatic Destruction of Value**

19 6. Far from preserving the value of the receivership assets, the receiver's actions
20 and failures to act have only helped Leong move closer to his goal of forcing a liquidation of the
21 entities' assets at "fire sale" prices, something Leong has so far been unable to achieve in the
22 arbitration he agreed to use to resolve this dispute.

23 7. The pre-receivership's total fair market value (even as the entities embarked on
24 "Phase II" of their business plan) is stated in the Declaration of J. Armand Musey (plaintiff
25 Leong's own expert), filed under seal in this court on July 7, 2015. (A courtesy copy of the
26 sealed Musey declaration is being lodged with the court in support of this motion). The Musey
27 Declaration shows values of the licenses in *Dollar "MHz Pops" rates, and in total value for*
28 *classes of licenses*. Musey estimates the total value for all of the licenses to be in the range of

1 more than a half billion dollars to over five billion dollars. See Musey Decl. at ¶7.a. Musey's
2 valuation is consistent with that of the expert I hired on behalf of the entities, Walters
3 Associates, Inc., which Musey in fact references at ¶5.d. of his declaration.

4 8. Attached as **Exhibit 1** is a draft report from Mr. Walters (still in progress), which
5 shows the dramatic loss in value due to Leong's public filings related to the receivership, which
6 has depressed market values.² The Walters report shows that due to the Leong attacks on the
7 entities and licenses in his public court and FCC filings that sought this receivership, *the*
8 *licenses' fair market value dropped by half and possibly more than half*. This was prior to the
9 court issuance of the Receivership Order. Thereafter, this receivership has caused further
10 devaluation, by orders of magnitude, as shown below.

11 9. **Exhibit 2** is a public online document from Navigant, a leading company in the
12 power utility market, which states Dollar MHz Pop rates in line with those of Mr. Musey (and
13 those of Mr. Walters prior to the devaluation by Mr. Leong noted above).

14 10. **Exhibit 3** is a publication by professors at the University of California Berkeley
15 regarding their research on "C-HALO" ("Cooperative High Accuracy Location" wireless) cost-
16 benefit analysis. This research and publication was initiated by me, for the receivership entities,
17 and in large part funded by the entities via a charitable grant to the University. This publication
18 shows that nationwide C-Halo, a core application and goal of the receivership entities, would
19 improve the nation's GDP by \$160 to \$320 billion over 22 years (just in highway safety and
20 efficiency). *Id.* at p. 1. "C-HALO" is also called "pPNT" (precise Position, Navigation and
21 Timing). The Entities' FCC licenses are the best in the nation for C-HALO/ pPNT. This large
22 GDP increase estimation reflects the fair market values of the Entities' licenses in the Musey
23 Declaration, and the like values in **Exhibits 1 and 2**.

24 11. The Leong receivership has caused drastic devaluation of those fair market
25 values, as shown in **Exhibits 4 through 6**, attached hereto. These include the receiver's
26

27 ² Information that is confidential to the entities and third parties, and that involves trade secrets,
28 has been redacted.

1 descriptions to me of her proposed sale of all of the Skybridge LMS licenses (the vast majority
2 of all of its FCC licensed spectrum nationwide) to PCS Partners (a non-operational company in
3 LMS licenses and services), and her two proposed sales of some of the entities' AMTS licensed
4 spectrum to railroad companies. As this motion was being prepared, the receiver's counsel
5 notified my counsel that the receiver was no longer pursuing the disastrous proposed sale of the
6 Skybridge LMS licenses to PCS Partners. Nonetheless, the receiver's proposed deal not only
7 shows the damage the receivership has done to the value of the LMS licenses, but it also
8 demonstrates that the receiver and her advisers do not possess the knowledge and experience
9 necessary to negotiate reasonable or beneficial deals. This is not surprising as it is neither the
10 court nor the receiver's business to negotiate such deals in this highly specialized field.

11 12. As explained below, these three proposed license-sale deals each represent a
12 huge loss in value, in orders of magnitude, especially for the Skybridge Licenses. Following my
13 objections to these grossly negligent proposals, the receiver made no attempt to show that the
14 proposed deals were not at drastically low prices. Not only are the proposed sales rank "give-
15 aways" when compared to fair market value, but they are also many times lower when
16 compared (on an apples to apples basis) to the prices I had negotiated with the railroad
17 companies. This is a matter of grave importance, and I can explain this in more detail if the
18 court offers me an opportunity to do so at an evidentiary hearing, which would be appropriate
19 before allowing any of these recklessly proposed sales to occur.

20 13. **The Receiver's Proposed PCS Partners Transaction:** Attached hereto as
21 **Exhibit 4** are the receiver's "deal points" for the proposed sale of Skybridge's LMS licenses to
22 PCS Partners. On this "deal sheet," which the receiver provided to my counsel on July 18,
23 2016, the receiver proposes to sell all of the Skybridge LMS licenses for [redacted] (this
24 includes the costs of the transaction, and the [redacted] litigation set aside, which would
25 indicate a net sale price or value of [redacted]

26 14. The minimum fair value for these licenses is conservatively estimated to be
27 approximately [redacted] the receiver's sale price or value (even at the start of the
28 entities' post-license-clearance Phase II, as explained above). This is shown in the Musey

1 Declaration as follows (and as noted herein, the Musey valuations are supported by the values
2 from Walters and Navigant, and also reflected in the UC Berkeley study (**Exhibit 2**):

3 The following figures are taken from Musey Declaration's Chart 1:

- 4 • Skybridge's LMS licenses total MHz-Pops = 486,207,697
- 5 • Preliminary Value Metric \$/MHz-Pop Values for LMS:

6 [redacted]

- 7 • Multiplying the above figures [redacted]

8 [redacted] Skybridge's LMS licenses are *valued* [redacted]

9 [redacted] (in stark contrast to the receiver's proposed sale price [redacted])

10 15. Moreover, at page 5, ¶7.a. in his declaration, Musey states that collectively, the
11 entities' licenses could be worth as much as [redacted] "corrected for potential real world
12 value of the 900 MHz spectrum." Because Skybridge's LMS licenses represent 1/3 of all the
13 LMS spectrum, that would mean an additional [redacted] (over the above estimates) for
14 licenses the receiver proposes to give away for a mere [redacted]

15 16. On July 25, 2016, I objected to the receiver's proposed PCS Partners transaction
16 in **Exhibit 4** for the reasons explained above. Three weeks later, on August 15, 2016, the
17 receiver's counsel wrote to counsel for the parties, stating that "given the negative feedback"
18 she had received, she did not plan to proceed with that transaction. Her counsel's August 15,
19 2016 email is attached hereto as **Exhibit 7**.

20 17. There could be no better evidence of the dramatic loss in value to the licenses
21 than the receiver's proposed PCS Partners deal. Moreover, the receiver's decision not to pursue
22 the deal after I objected to it, demonstrates that she failed to do even the minimum proper
23 diligence to determine the current value of those licenses. Had she done so, she would not have
24 ever proposed the deal, much less attempted to get the deal approved.

25 18. **The Receiver's Proposed PTC-220 Transaction:** On July 18, the Receiver
26 provided to the parties' counsel the "deal points," attached hereto as **Exhibit 5**, for a proposed
27 deal to sell spectrum to PTC-220. A price rate cannot be determined from the exhibit with any
28 reasonable precision due to the failure of the receiver to provide critical information, including:

- **Territory:** the specific geographic region(s) involved.

- 1 • **Quantity:** the amount of spectrum in each sub region (two different amounts are noted).
- 2 • **Power:** the radio-frequency power levels (co-channel and adjacent channel) at the PTC
- 3 system base stations, and in the field at the borders of whatever the region(s) are, and
- 4 what power levels the licensee may have in relation to the PTC system at defined points,
- 5 lines, etc.
- 6 • **Height:** the permitted height(s) of the PTC base station antennas, and their transmission
- 7 directionality.

8 If the receiver were even minimally qualified to negotiate deals of this nature, she would
9 understand that without the above information, there is no specific transaction described, even
10 on a most basic level, and there is no meaning to the proposed pricing, although it appears
11 grossly low based on the inadequate information the receiver has provided.

12 19. The above notwithstanding, the Receiver's proposed PTC-220 deal is
13 undervalued by as much as redacted versus what I had been
14 negotiating³ for the following reasons. Following my objections to this deal, the Receiver
15 responded in her August 4, 2016 email, which is attached hereto as **Exhibit 11**. Her response,
16 in relevant part, was as follows:

17 The PTC-220 transaction is very similar to the deal that you
18 negotiated before the receivership began. In fact, the term sheet
19 you negotiated with PTC-220 served as the starting point for the
20 transaction discussions that have had with PTC-220.

21 With respect to your concerns as to the purchase price, please note
22 that this reflects the fact that PTC-220 will need to expend
23 considerable resources to remove the relevant encumbrances (*i.e.*,
24 some existing, site-based licenses in the Northeast). If this
25 clearing process is relatively easy, the purchase price will increase
26 to effectively the same level that you apparently agreed to
27 previously with PTC-220.

28 As to your concerns regarding the sale of spectrum on a full-
county basis, we note that this was one of the transaction
structures that was specifically included in the original term sheet
that you negotiated with PTC-220 and upon which we based our
negotiations with PTC-220. We view the fact that it was

³ What I was negotiating is in line with the spectrum values (Dollars / MHz-Pop) Musey Declaration (filed under seal July 7, 2015; courtesy copy submitted herewith) and the other Exhibits attached hereto on spectrum values and valuation.

1 apparently acceptable to you in the past as strong evidence that it
2 does not present material issues today.

3 20. The Receiver does not explain what she means by "*very similar to* the deal that
4 you negotiated," (emphasis added) and she did not communicate with me on the various options
5 I was negotiating with PTC-220 for transactions in the New England area. Regarding the
6 Receiver's second paragraph above, the seller cannot reasonably agree to a transaction term that
7 would put into the exclusive control of the buyer the costs to be incurred in clearing
8 encumbrances. In a nutshell, the Receiver is letting PTC-220 determine what to pay MCLM (a
9 long-standing business associate of PTC-220) versus what to pay the Receiver (a temporary
10 receiver *pendente lite*). This is further evident because after four years of the Sippel hearing
11 proceeding, in Docket No. 11-71, MCLM gave no proof of timely construction and ongoing
12 operation of the two AMTS site-based stations that cause the alleged encumbrances (one in
13 Connecticut and one in Massachusetts). As indicated above, PTC-220 will benefit by paying
14 MCLM money it would otherwise have to pay the Receiver because the Receiver proposes to
15 abandon any leverage she would otherwise have here. Further, the Receiver has already
16 proposed to this court, and effectively to the FCC and MCLM, that the Receiver is giving up
17 challenge to MCLM site-based stations not yet surrendered by MCLM in the Sippel hearing
18 proceeding, 11-71. The Receiver did this in several ways, including in her public filings in this
19 court to seek approval of her settlement with Puget Sound Energy, another company with a
20 business relation with MCLM.

21 21. For the above reasons, this proposed transaction requires the Receiver to give the
22 railroad, PTC-220, the AMTS geographic spectrum throughout the vast territory of the alleged
23 encumbrances (through most of the populated area of Connecticut and Rhode Island and some
24 into Massachusetts), for effectively no consideration. That is a **rank giveaway**. This is
25 approximately **one-half** of the total price involved in this set-aside for the purported
26 encumbrances, thus about a **1/2 devaluation**. But, as explained below, the gross devaluation
27 doesn't stop there.
28

1 22. The problems with this deal are further complicated by the "county assignment"
2 waste: PTC-220 does not need spectrum by whole counties, as described in the receiver's notes,
3 but needs it only in tight corridors along the tracks for entirely clear technical reasons, including
4 the base stations' use of low height antennas, their fairly close spacing, their position on the
5 rights of way along the tracks, and their focus of the radio signals up and down the tracks to the
6 trains. Improper assignments by counties will waste a huge amount of spectrum. Spectrum
7 waste is improper under the Communications Act and FCC policy. Moreover, the proposed
8 deal would result in a wasteful give-away of spectrum that could be put to actual use as well as
9 blocking the licensee making the deal from use of its retained spectrum in large areas between
10 and near the jagged borders of the counties involved. I extensively discussed this with Amtrak
11 and FCC legal, who agree with my assessment.

12 23. Thus, this proposed transaction requires the Receiver to give the railroad, PTC-
13 220, the AMTS geographic spectrum throughout the vast territory of the alleged encumbrances
14 (through most of the populated area of Connecticut and Rhode Island and some into
15 Massachusetts), for effectively no consideration. It is a **rank giveaway of 50%** of the spectrum
16 that is the subject of the transaction. Extrapolate this deal out and it results in a 50% reduction
17 in value of the entities' AMTS spectrum, an unconscionable devaluation that cannot be justified
18 under any plausible circumstances.

19 24. The Receiver responded to my objections by suggesting that the "full county
20 basis" was in the "original term sheet that...[I had] negotiated." That is false. PTC-220
21 proposed to purchase spectrum in whole counties, but I showed PTC-220 in response why a sale
22 and lease of spectrum is far more spectrum efficient and more effective for PTC wireless in
23 addition to the FCC's strong policy against wasting spectrum and radio transmission power. In
24 fact, I proposed the same corridor structure that I had proposed to Amtrak, and which Amtrak
25 adopted with FCC approval. I informed the receiver of the foregoing in my comments to her,
26 but to no avail. By selling counties and not corridors along the railroad tracks, it is easy to show
27 to any competent person in this type of wireless that the Receiver is proposing to give away well
28

1 over 50% additional amount of spectrum territory than needed for railroad PTC wireless, for no
2 consideration. I cannot be too blunt here: there is no one minding the store.

3 25. Were the above not enough, the Receiver has not defined the quantity of
4 spectrum in the different regions involved, but refers to at least two quantities of spectrum, and
5 despite my objections, has not explained whether it is paired or unpaired spectrum. Assuming
6 she means the higher quantity of spectrum in all of the counties at the maximum power level
7 and antenna height that the FCC default rules permit, she is giving away many times -- possibly
8 more than four times (by simple, standard technical analysis) -- the quantity of spectrum versus
9 what I was negotiating and what is actually needed for PTC wireless, and for no additional
10 consideration, thus resulting in a **75% loss in value** to the subject spectrum.

11 26. Last, *but not at all least*, the Receiver's proposed transaction is described as a
12 spectrum sale (with no lease). As compared to what I had been negotiating, I informed the
13 Receiver of the significant loss that would be incurred if there is no spectrum lease for parts of
14 the territory involved, on each side of the tracks, as opposed to a sale of that spectrum on each
15 side of the tracks, where the spectrum is sold only in a corridor immediately adjacent to the
16 tracks, which, in the Amtrak deal, was 3 miles on each side of the track. Not including a lease
17 means that *the railroad's operations using the sold and leased spectrum will also not count*
18 *toward the construction-substantial service requirements for the receivership entities*
19 *involved*, and is thus a loss of enormous value to the receivership entities, possibly more
20 valuable than the full amount of cash consideration in this transaction, easily constituting
21 another **50% loss** in value for the affected spectrum.

22 27. Considering all of the above, the proposed PTC 220 deal is approximately
23 devalued, from what I had been negotiating and what is otherwise fair market, as follows: about
24 1/2 devaluation for the territory and price giveaway, at least 1/2 devaluation for the counties
25 versus the corridor, about 1/4 or more devaluation for the additional spectrum, power, etc., and
26 at least 1/2 devaluation for not including a lease. The resulting loss ($\frac{1}{2} \times \frac{1}{2} \times \frac{1}{4} \times \frac{1}{2}$) equates to
27 a reduction down to 1/32 of the deal I had been negotiating or a **97% price reduction**.
28

1 28. In sum, the Receiver's prices indicated in **Exhibit 5** are orders of magnitude
2 lower than fair market value just on a cash basis, and because the deal does not include a lease,
3 the value of the lease to the licensee is also a loss when compared to the fair market deal I had
4 previously been negotiating with PTC-220. I can explain all of the above in more detail at an
5 evidentiary hearing, if the court will allow me this opportunity.

6 29. **The Receiver's Proposed Alstom Deal:** The deal points for the Receiver's
7 proposed sale of spectrum to Alstom were provided by the Receiver in what is attached hereto
8 as **Exhibit 6**. The Receiver's proposed Alstom deal is undervalued by approximately 4 to 8
9 times (1/4 to 1/8 the actual value) verses what I had fully negotiated with the buyer for the
10 following reasons, which I have shown to the receiver, again to no avail. After I objected to this
11 proposed sale, the receiver responded, "The proposed transaction with Alstom is nearly identical
12 to the transaction that you appear to have personally negotiated with Alstom's predecessor, GE
13 Transportation." Were that the case, the receiver should have, but did not, provide me with the
14 actual proposed transaction, but instead simply provided me a copy of **Exhibit 6**.

15 30. **Exhibit 6** demonstrates that the receiver in fact proposed a large additional
16 amount of spectrum with specific limits on antenna site radio transmission power and antenna
17 height. Because the receiver did not indicate that she was modifying her proposed transaction in
18 response to my objections, it must be assumed that what she proposed initially is the transaction
19 she has negotiated and intends to have approved.⁴ But, as stated above, the deal represents a
20 grossly undervalued sale by as much as 88%. Despite my objections, the receiver has failed to
21 provide any information, data or evidence of any kind to suggest that my assessment of her
22 proposed sale is wrong in any regard.

23
24 ⁴ The court ordered the Receiver to discuss with me actual proposed transactions. The Receiver
25 violated the Order regarding her three proposed transactions, by not giving me the actual
26 proposed transaction documents, or clear term sheets with the material details. To this day, the
27 Receiver has not done that. The Receiver cannot ask the court to approve sale transactions that
28 do not have definite written terms, or where the Receiver did not submit those terms to me for
comment prior to seeking court approval.

1 31. The extraordinary loss in value of the LMS and AMTS licenses, by significant
2 orders of magnitude overall, shown above, can be applied to the rest of the licenses due to the
3 receiver's consistent pattern of neglect, as further discussed below, and because the court gave
4 permission to the receiver early this year to market to sell off about half of all of the licenses,
5 including licenses in all the major classes (LMS 900 MHz, AMTS 200 MHz, MAS 900 MHz,
6 and 'Paging' in the 40 MHz range). In summary, with more than ample opportunity for doing
7 so, the receiver has been unable to show any material market interest in transactions that would
8 reflect anything but a total "give away" of extraordinarily valuable spectrum.

9 32. Whether through her own fault or that of the mere existence of the receivership
10 itself, it is clear the receivership is not accomplishing its objectives. To the contrary, the
11 receivership is causing unconscionable losses to the receivership entities, losses that declarant is
12 ready willing and able to mitigate by helping the entities continue with the highly successful
13 activities they were engaged in, and which came to a grinding halt, when the entities were
14 placed into receivership and the receiver declined to continue, despite my pleas. Thereafter, the
15 receiver announced to the FCC and the market, her intention to sell off the licenses, and to
16 abandon defenses of the licenses, for which expert license development, timely compelling
17 license extensions and renewals, and other fundamental actions are needed, all of which the
18 entities were succeeding with until the receivership commenced. By her conduct, the receiver
19 has now driven down the values to "fire sale" prices. At this time, the best, if not the only way,
20 to recover from the receiver's harmful conduct is to end the receivership immediately, and allow
21 me to begin mitigating the devastating harm that has occurred.

22 **The Receiver's Neglect of Her Duty To Protect the Licenses**

23 33. Setting aside the incredible losses caused by the receivership, the receiver has
24 neglected her duties and should be relieved of them for that reason alone, independent of the
25 actual harm she has already caused. The FCC has a firm policy, reflected in its orders, to grant
26 reasonable relief to entities in receivership or bankruptcy, and to grant reasonable relief to
27 licensees that are nonprofit entities under IRC §501, such as Skybridge Spectrum Foundation
28 ("SSF"). I have shown these to the receiver and her FCC-law counsel in writing and in oral

1 presentations. In addition, this is shown by the receivership of William Holland that I (for
2 Environmental LLC and myself) established years ago, and which the receiver in this case now
3 controls: in the Holland receivership, based on my pleadings that receiver Holland accepted and
4 submitted to the FCC, the FCC granted to Holland for FCC licenses held in his receivership
5 additional time to meet any construction or "substantial service" requirement (initial or for re-
6 activation). Attached hereto as **Exhibit 8** is a true and correct copy of the FCC's Order granting
7 Holland's Request. Despite being aware of this decision, the Receiver in this case has failed to
8 even ask the FCC for relief that is available under established FCC policy to a licensee and
9 licenses in receivership.

10 34. Instead, the Receiver took the position before the FCC that she must sell off all
11 of the Receivership licenses without first attempting to pursue what would obviously be a far
12 less drastic remedy. I have never seen, in decades of experience in FCC matters, any license
13 controller act with such a level of willful negligence, with such predictable catastrophic results.
14 Moreover, the proposed action is contrary to the core public interest standards of all FCC law
15 and actions, and the FCC and Congressional expectations that license controllers compete with
16 one another (rather than collude) and seek available relief.

17 35. Further, by conceding and telling the FCC in public filings that she will not
18 continue the construction of substantial-service actions for the receivership entities, which they
19 were heavily engaged in prior to the Receivership (with FCC approval), the receiver is violating
20 the FCC's expectations and requirements for renewals, effectively communicating to the
21 relevant market of buyers, lessees, and joint venture entities that she is in no position to
22 negotiate for reasonable prices and terms. Again, I have never seen such negligence in an FCC
23 license-based business, or any business.

24 36. Licenses issued by the FCC are for a finite period of time. Generally, they are
25 also subject to "substantial service" or construction obligations (also sometimes called "build
26 out" obligations, as on the face of some licenses) at or before the expiration date of the license.
27 Those deadlines can be extended by the FCC. I, on behalf of the Receivership entities, have
28 been very successful obtaining extensions of those deadlines over the years. Because the

1 receivership entities have been developing new uses for the licensed spectrum, often requiring
2 the development of new technologies. In order to obtain those extensions, we have
3 demonstrated to the FCC the extent of the research and development being performed to
4 facilitate use of the spectrum for the above described advanced wireless communication
5 purposes. Following the appointment of the receiver, the research and development efforts have
6 stopped and the receiver has ignored my entreaties that she protect the licenses by continuing
7 these critical development activities.

8 37. In addition to the above, for inexplicable reasons, the Receiver has failed, on
9 multiple occasions, to recognize that the FCC has already approved the entities' partition and
10 disaggregation strategy, thus freeing many of the licenses held by entities other than Skybridge,
11 from any substantial service requirement.

12 **Non-Profit Skybridge Spectrum Foundation**

13 38. Skybridge, as mentioned previously, is a Delaware Non-Profit Corporation, a
14 private operating foundation that is tax exempt under IRC §501(c)(3). Although I have served
15 as its President, I have no interest in it. Unlike some foundations which simply donate money to
16 worthy causes, Skybridge is an operating foundation which it not only supports scientific
17 research, but provides spectrum and other support to public entities and other scientific
18 researchers for the long term use of these technologies. In particular, through Skybridge's
19 support, we anticipate being able to share infrastructure with the public agencies for the broader
20 development of these technologies.

21 39. When certain of the receivership entities disaggregated portions of licenses and
22 donated them to Skybridge, I requested and received Mr. Leong's consent to that donation.
23 Attached hereto as **Exhibit 9** is an email, confirming Mr. Leong's consent. Moreover, Mr.
24 Leong received and certainly did not ever object to the very substantial tax deductions (in the
25 tens of millions) he received as a result of those donations.

26 40. In addition, contrary to the Receiver's contentions some months ago, made and
27 incorrectly repeated in public filings by the Receiver, there has never been a valid termination of
28 Skybridge's tax-exempt status. Internal communication at the IRS leaves something to be

1 desired and there have been occasions where the tax-exemption has purportedly been terminated
2 despite the fact that Skybridge held valid extensions of time from the IRS to file tax returns. In
3 each instance once proof of the valid extension was provided, the revocation of tax-exempt
4 status was rescinded. However, as evidenced by the Receiver's filings herein, in complete
5 disregard for Skybridge's status, the Receiver has comingled the funds of Skybridge and
6 attempted to sell its assets necessary to its operating and charitable nature for purposes of paying
7 the other entities' debts and obligations, as evidenced in other motions filed by the Receiver
8 herein.

9 **The Receiver's Non-Action on, and Request to Stay The Sippel Order**

10 41. In her March 18, 2016 petition to stay filed with the FCC (attached hereto as
11 **Exhibit 10**), the Receiver has asked for a stay of an HDO that has not and cannot ever be issued.
12 What the Receiver appears to mean in fact is this: do not take any action on the pending
13 appeals/challenges to the Sippel Order. Notably, the Receiver *did not* ask for a stay of that part
14 of the Sippel Order that kicked several of the receivership entities out of the hearing in FCC
15 Docket No. 11-71 (dealing with incumbent licenses blocking certain of the receivership entities'
16 AMTS licenses, as well as rights that certain of the receivership entities, namely Environmental
17 LLC and Intelligent Transportation & Monitoring Wireless LLC, have to Maritime's geographic
18 licenses, potentially worth many millions, as the only lawful high bidders for those licenses in
19 FCC Auction No. 61). The Receiver has in essence asked the FCC to refrain from taking action
20 that would, once and for all, remove the alleged cloud over the receiverships' assets (the Sippel
21 order), while at the same time neglecting to ask the FCC to permit the receivership entities to
22 assert and protect their highly valuable rights and interests in the 11-71 Action.

23 42. I have filed a well-briefed and well-founded appeal of the Sippel Order, copies of
24 which are attached as Exhibits A & B to Defendant's Request for Judicial Notice filed in
25 support of this motion. As established in those briefs, the Sippel Order suffers from a fatal
26 procedural defect, among other obvious due process problems with it, which make it
27 jurisdictionally impossible for the FCC to ever issue the dreaded Hearing Designation Order
28 regarding the receivership entities or me. The FCC appears to be aware of the many problems

1 with the Sippel Order, which is presumably why it has never taken any action on the now more
2 than one year-old Order. Meanwhile, rather than support any challenges to the Sippel Order, the
3 receiver has incredibly told the FCC that she takes no position at all on the merits of the
4 receivership entities' and Havens' pending appeals of the Sippel Order, the success of which
5 would of course remove any perceived risk to the entities.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Executed on August 19, 2016.

9 
10 WARREN HAVENS

11
12 4811-7222-6102.1

DECLARATION OF WARREN HAVENS IN SUPPORT OF MOTION TO
TERMINATE RECEIVERSHIP

EXHIBIT 1

WALTERS & ASSOCIATES, INC.

Specialized Financial Consulting to the Communications Industry

Confidential Attorneys' Eyes Only

Preliminary, Incomplete Draft Subject to Revision. For W&A, Inc. Working Purposes

Spectrum Valuation Analysis
November 13, 2015

Preliminary, Incomplete Draft Subject to Revision
For Walters & Associates, Inc. Working Purposes

Internal Incomplete Draft

Spectrum Valuation Analysis

Walters & Associates, Inc. has been retained by Verde Systems LLC; Environmental LLC; Environmental 2 LLC and Telesaurus Holdings GB LLC, (hereinafter the "Managed Entities"). The purpose of our engagement is to render our expert opinion as to the fair market value of FCC license authorities subject to the complaint and relief process occurring in the State of California arbitration proceeding: Leong v Havens et al. v Leong, AAA Case Number: 74-20-0500-1055 before Arbitrator James Madison.

Walters & Associates, Inc. is fully qualified to perform the expert analysis arising from the above captioned arbitration proceeding and provides herein our estimate of the fair market value of the Managed Entities license authorities in the absence and presence of the actions of Mr. Leong. Mr. Leong's actions include certain public, court and Federal Communications Commission (FCC) filings and various wrongful disclosures of confidential information that have caused serious adverse affect on the licenses. Moreover, Mr. Leong's public statements, accusations and public filings directly contradict filings made by the Managed Entities before the FCC to both obtain and maintain the licenses and contradict good management of the licenses and licensee companies. Furthermore, Mr. Leong's public and FCC filings could result in the cancellation of the active status of the existing license authorities for the subject licenses. The contradictory filings include a claim by Mr. Leong that he has been, and remains, a co-controller of the Managed Entities and all of their licenses, which if true, would violate FCC requirements for license holders. In addition, we have consulted with management personnel of the Managed Entities and their legal counsel regarding the facts and circumstances of the arbitration proceeding. The above noted public Leong filings are herein called the "Leong Public Filings".

Walters & Associates, Inc. has previously observed and documented the reduction of FCC license values in the marketplace as a result of actions comparable to those of the Leong Public Filings. Evidence and testimony of license value reduction due to FCC regulatory actions imposed on a licensee was provided by Walters & Associates, Inc. in the Northern District Mississippi U.S. Bankruptcy Court proceeding No. 11-13463, DN324 in February 2012. Walters & Associates, Inc. has relied on the observations and evidence determined in the Mississippi case and in private market spectrum negotiations directly impacted by the Leong Public Filings to determine the impact to the license authorities subject to this report. The Leong Public Filings have already demonstrably impacted the value of AMTS licenses in a private market negotiation. The Leong Public Filings have negatively impacted the marketplace value of all license authorities controlled by the Managed Entities, and stand to jeopardize the active status of all the existing license authorities.

Walters & Associates, Inc. provides herein our estimate of the current fair market value of the spectrum licensed to the Managed Entities in the absence of the Leong Public Filings and the value of the license authorities in the presence of the Leong Public Filings.

License Value in Absence of Leong Public Filings

Managed Entities Spectrum Overview

The Managed Entities control a number of licensees including Verde Systems, LLC, Environmental, LLC, Environmental-2, LLC and Telesaurus Holdings GB, LLC that hold FCC license authorities in the Automated Maritime Telecommunications System (AMTS) service; the Location and Monitoring Service (LMS) the VHF Public Coast Service (VPO) the 220-222 MHz Radio Service (220 MHz); and Part 22 low band and VHF paging service.

AMTS Service

AMTS uses spectrum in the 217/219 MHz band. This service was established in 1981 as an alternative to VHF public coast service. In 1997, the FCC amended its rules to permit AMTS licensees to serve fixed and mobile units on land, in addition to maritime vessels. The Commission's goal was to permit licensees to make use of excess channel capacity so that the stations would be more economically viable and competitive with other CMRS providers, provided that serving units on land did not negatively affect vessel safety. In 2002, the Commission adopted a geographic area licensing approach for AMTS stations. The Federal Communications Commission conducted two AMTS spectrum auctions in 2004 and 2005.

AMTS Spectrum Valuation

Verde Systems, LLC, Environmental, LLC and Environmental-2, LLC are the licensees for AMTS spectrum controlled by Managed Entities. According to management reports and FCC database information, Verde Systems, LLC has 151.8 million MHz/Pops; Environmental, LLC 103.7 million MHz/Pops and Environmental-2, LLC 21.1 million MHz/Pops. The total AMTS MHz/Pops for the three is 276.5 million.

Walters & Associates, Inc. performed a comparative sales analysis of eight private market AMTS spectrum transactions occurring between the period of June 2008 and December 2014 which were considered appropriate for the analysis. For each transaction we identified the seller, buyer, transaction date, market area, total population and sale price. From this information we calculated the Per-MHz population, and the Per-Pop/Per-MHz value for each deal. The Per-Pop/Per-MHz valuation metric is routinely used by valuation analysts, the Federal Communications Commission and industry analysts to compare spectrum transactions. In determining the Per-Pop/Per-MHz value of the comparative spectrum, the analyst selected a weighted valuation approach. The advantage of using a weighted valuation technique is that the valuation result is more heavily influenced by the larger deals, in terms of population and price, observed in comparable transaction data. The total combined purchase price for the eight market transactions was calculated to be [REDACTED]. The combined total MHz Pops for the eight deals was [REDACTED]. The Per-Pop/Per-MHz value for the spectrum, using the weighted valuation approach, is calculated to be [REDACTED]. The total AMTS MHz/Pops for the three

Managed Entities is [REDACTED]. The total current estimated fair market value for the subject AMTS spectrum is [REDACTED].

LMS Service

In 1995, the Commission established the Location and Monitoring Service (LMS) as a new radio service to be licensed in the 902-928 MHz spectrum band. The LMS band is allocated on a primary basis to federal radiolocation systems and Industrial, Scientific, and Medical (ISM) equipment. In addition, unlicensed devices authorized under Part 15 may use the 902-928 MHz band, but cannot cause harmful interference to LMS licensees. LMS systems are used to track and locate objects over a wide geographic area or to transmit data to and from objects passing through particular locations.

LMS Spectrum Valuation

(Subject to review and analysis of construction cost savings)

Telesaurus Holdings GB, LLC is the licensee for LMS spectrum controlled by Managed Entities. According to management reports and FCC database information, Telesaurus Holdings GB, LLC has a total of 982.9 million MHz/Pops. In order to determine the current estimate of the fair market value of the Managed Entities LMS license authorities, Walters & Associates, Inc. relied on the analysis and conclusions contained in its October 2008 valuation report of Telesaurus Holdings GB, LLC LMS spectrum. In order to determine the value of the LMS spectrum authorities in 2008, the appraiser performed a comparative sales analysis of 900 MHz FCC auction data compiled from SMR Auction 55. The Per-Pop/Per-MHz values in the analysis ranged between [REDACTED] for the largest market area to [REDACTED] for the smallest market area. The average Per-Pop/Per-MHz value for the market areas was [REDACTED]. Walters & Associates, Inc. has observed a general trend of spectrum appreciation over the last several years. To account for this spectrum appreciation, the analyst adjusted the 2007 per MHz/Pop value by [REDACTED] to arrive at a current estimate of [REDACTED] per MHz/Pop for the license authorities.

Subsequent to our 2007 valuation, the LMS license authorities were subject to a FCC regulatory ruling that removed the construction requirement for a material amount of the LMS spectrum bandwidth. As such, any future buyer of the license authorities will not be burdened with needing to meet a construction requirement. This benefit has a material value, which can be estimated with reasonable accuracy. Walters & Associates, Inc. reviewed the LMS market areas and made capital cost and lease expense estimates necessary to meet the substantial service construction requirements for the market areas. We estimate that the capital and lease cost savings would be between [REDACTED] as a result of the elimination of the safe harbor construction requirements for the LMS spectrum authorities. Walters & Associates, Inc. estimates that the current fair market value of the license authorities, including the construction benefit would equate to [REDACTED] Per-Pop/Per-MHz. The total LMS MHz/Pops for the Telesaurus Holdings GB, LLC license authorities is 982.9 million. The total current estimated fair market value for the subject LMS license authorities is calculated to be [REDACTED].

Public Coast VHF Service

The Public Coast VHF service is a part of the Maritime Services. Public Coast VHF service is used by commercial mobile radio service operators to permit ships to send and receive messages and to interconnect with the public switched telephone network. VHF public coast stations were established to serve port and coastal areas using 156-162 MHz band frequencies that are allocated internationally for maritime service. Public Coast VHF service providers generally provide short-range communications for vessels not more than 30 nautical miles from shore. VHF public coast stations may provide fixed, mobile, or hybrid communications. Service may be provided to users on land, provided that priority is given to maritime originating communications.

Public Coast VHF Service Spectrum Valuation (Subject to review of Public Coast comparable sales)

Telesaurus Holdings GB, LLC and Verde Systems, LLC are licensee for Public Coast VHF spectrum controlled by Managed Entities. According to management reports and FCC data base information, Telesaurus Holdings GB, LLC has 499.9 thousand MHz/Pops and Verde Systems, LLC has 2.6 million MHz/Pop. The total Public Coast VHF MHz/Pops for the Managed Entities is 3.0 million. In order to determine the current estimate of the fair market value of the Public Coast VHF license authorities, Walters & Associates, Inc. relied on a comparative sales analysis of Public Coast VHF auction data compiled from Public Coast VHF Auctions 20 and 39. The average Per-Pop/Per-MHz price paid for the market areas was [REDACTED] Per-Pop/Per-MHz. Walters & Associates, Inc. has observed a general trend of spectrum appreciation over the last several years. To account for this spectrum appreciation, the analyst adjusted the 1998 per MHz/Pop value by [REDACTED] to arrive at a current estimate of [REDACTED] Per-Pop/Per-MHz for the spectrum. The total Public Coast VHF MHz/Pops for the Telesaurus Holdings GB, LL and Verde Systems, LLC spectrum is 3.1 million. The total current estimated fair market value for the subject Public Coast VHF license authorities is [REDACTED]

220 MHz Service

In 1988, the Commission adopted the 220 MHz Allocation Order, reallocating the 220-222 MHz band from the Amateur Radio service to private and Federal Government land mobile use. The spectrum for the 220 MHz services was allocated by the FCC to promote the development of narrowband spectrum efficient technologies for land mobile communications. The Commission adopted service rules that dictated five kilohertz (kHz) channel pairs in the 220-222 MHz band to private land mobile users. The FCC's initial decision to limit channel assignment bandwidths 5.0 kHz was intended to force more efficient use of the spectrum. Other land mobile services, including SMR were authorized for 25.0 kHz and 12.5 kHz channel bandwidths. The 220 MHz Service, however, was greatly impacted by the failure of manufacturing companies to provide competitively priced narrowband 220 MHz mobile and

transmitter equipment. Consequently, 220 MHz Service providers sought alternative solutions including aggregating channel assignments to higher bandwidth channels and working with manufacturers to provide more attractive solutions to narrow bandwidth channel restrictions. The FCC has accommodated the 220 MHz Service by allowing partitioning and disaggregation rules to licensees. The FCC has sponsored four competitive spectrum auctions for the allocation of 220 MHz spectrum. The first, Auction 18, was conducted in September 1998. The second, Auction 24, was held in June 1999. The third, Auction 42 was held in January 2002 and the fourth, Auction 72, was held in June 2007.

220 MHz Service Spectrum Valuation

Environmental, LLC is the licensee for 220 MHz spectrum controlled by Managed Entities. According to management reports and FCC database information, Environmental, LLC has a total of 88.2 thousand MHz/Pops. In order to determine the current estimate of the fair market value of the Managed Entities 220 MHz spectrum, Walters & Associates, Inc. relied on a comparative sales analysis used in the Public Coast VHF valuation assessment which estimated current fair market value of the VHF spectrum to be [REDACTED] Per-Pop/Per-MHz. In addition, Walters & Associates also reviewed recent private market spectrum sales to be in the range of [REDACTED] Per Pop/Per-MHz. Walters & Associates, Inc. has concluded that a reasonable estimate for the 220 MHz spectrum would be [REDACTED] Per-Pop/Per-MHz. The total current fair market value for the subject 220 MHz spectrum is estimated to be [REDACTED].

Part 22 Low Band and VHF Paging Service

Part 22 Low band and VHF frequency bands are allocated for paging services. Licensees may use the spectrum to provide one-way messaging, two-way messaging and fixed wireless services. Paging systems are traditionally one-way signaling systems. Paging services, grouped by output, include; tone, tone/voice, numeric, and alphanumeric. Paging systems include subscription services to the public and private in-building systems, serving limited areas. In 1996, the Commission adopted the First Report and Order in the flexible spectrum use proceeding, in which several CMRS bands were allocated to the fixed service on a co-primary basis. The Commission concluded that the public interest would be served by giving CMRS licensees, including paging licensees, maximum flexibility to offer all types of fixed, mobile, and hybrid services.

Part 22 Low Band and VHF Paging Service Spectrum Valuation (Subject to review of MHz/Pop counts and comparable analysis)

Environmental, LLC is the licensee for the Part 22 Low Band and VHF Paging Service spectrum controlled by the Managed Entities. In order to determine the current estimate of the fair market value of the Managed Entities Part 22 Low Band and VHF Paging Service spectrum, Walters & Associates, Inc. relied on a comparative sales analysis used in the FCC Part 22 Low Band and VHF Paging Service Auction 95 conducted in 2013. The total auction bids for the Environmental, LLC spectrum was [REDACTED]. Walters & Associates, Inc. has

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observed a general trend of spectrum appreciation over the last several years. To account for this spectrum appreciation, the analyst adjusted the 2013 bid amount by [REDACTED] to arrive at a current estimate of [REDACTED] for the spectrum. The total current fair market value for the subject Part 22 Low Band and VHF Paging Service spectrum is estimated to be [REDACTED].

Spectrum Valuation

The Managed Entities include Verde Systems, LLC, Environmental, LLC, Environmental-2, LLC and Telesaurus Holdings GB, LLC that hold FCC license authorities in the Automated Maritime Telecommunications System (AMTS) service, the Location and Monitoring Service (LMS) the VHF Public Coast Service (VPC), the 220-222 MHz Radio Service (220 MHz); and Part 22 low band and VHF paging service. The total estimated current fair market value of the subject spectrum, in the absence of the Leong Public Filings is [REDACTED], as shown in Exhibit I.

EXHIBIT I LICENSE VALUE IN ABSENCE OF LEONG PUBLIC FILINGS

<u>Licensee</u>	<u>Service</u>	<u>MHz Pops</u>	<u>Per-Pop/Per-MHz Value</u>	<u>Total License Value in Thousands</u>
Verde Systems, LLC	AMTS	151,771,880		
Environmental, LLC	AMTS	103,707,475		
Environmental-2, LLC	AMTS	21,088,124		
Total AMTS Service MHz Pops:		276,537,479		
Telesaurus Holdings GB, LLC	LMS	982,920,126		
Total LMS Service MHz Pops:		982,920,126		
Telesaurus Holdings GB, LLC	VPC Service	429,968		
Verde Systems, LLC	VPC Service	2,618,821		
Total VPC Service MHz Pops:		3,048,787		
Environmental, LLC	220-222 MHz	88,233		
Total 220-222 MHz Service MHz Pops:		88,233		
Environmental, LLC	Part 22 Paging	N/A	N/A	
Total Estimated License Value:				

Source: FCC license database and estimates of licensee and Witters & Associates, Inc. See text.

Spectrum Value In The Presence of Leong Public Filings

Walters & Associates, Inc. has previously observed and documented the reduction of spectrum value in the marketplace as a result of the actions comparable to those instituted by the Leong Public Filings. Walters & Associates, Inc. has relied on the observations and evidence determined in litigation proceedings and in private market spectrum negotiations to estimate the license value loss to the subject Managed Entities license authorities by the Leong Public Filings. Walters & Associates, Inc. provides in this section of the report our analysis and conclusion as to the value to the Managed Entities license authorities as a result of the Leong Public Filings.

AMTS Marketplace Value Loss

Evidence of the loss of FCC license value due to FCC regulatory actions imposed on an AMTS licensee was provided by Walters & Associates, Inc. in the Northern District Mississippi U.S. Bankruptcy Court proceeding No. 11-13463, DN324, in February 2012. The facts and circumstances related to loss of AMTS marketplace value was demonstrated in the Mississippi Bankruptcy Court proceeding. Walters & Associates, Inc. has considered the observations and evidence presented in the Mississippi case to determine an appropriate discount factor to estimate the license value attributable to Leong Public Filings.

Maritime Communications/Land Mobile, LLC Bankruptcy Case

Walters & Associates, Inc. prepared a valuation analysis report dated January 29, 2012 of radio frequency spectrum in the Automated Maritime Telecommunications System (AMTS) service in the 217-220 MHz bands for SkyTel¹ (the "Report"). The purpose of the valuation analysis Report was to express our expert opinion as to the fair market value of certain AMTS-license spectrum in nine market areas, the rights to which, for purposes of the analysis, was assumed to be held by Maritime Communications/Land Mobile, LLC ("MCLM"). In order to derive that fair market value of the MCLM AMTS-license spectrum, Walters & Associates, Inc. reviewed the record of all of the completed AMTS-license sale transactions to date.² The Report, and its value conclusion, was accepted by the Bankruptcy Court as a reasonable estimate of the current fair market value of unencumbered AMTS license-spectrum. The valuation Report and supporting testimony was provided in the Northern District Mississippi U.S. Bankruptcy Court proceeding No. 11-13463, DN324. Due to the sensitive nature of the market information contained in the report, which included the transaction record of virtually every AMTS deal under consideration as of the date of the valuation, the parties to the litigation, Skytel and MCLM, agreed to maintain the confidentiality of the transaction information. As such, the valuation document

¹ The "SkyTel Entities" or "SkyTel" are, collectively: Skybridge Spectrum Foundation; Verde Systems LLC; Environmental LLC; Intelligent Transportation & Monitoring LLC; and Telesaurus Holdings GB LLC, each managed by Warren Havens.

² The FCC ULS database shows all license sale assignments. In this case, Walters & Associates, Inc. had access to the confidential license sale agreements underlying all of the FCC approved AMTS-license sale assignments between the period November 2008 to January 2012.

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was subject to a protective order to treat the contents of the Report as "Highly Confidential Information" subject to the protective order issued by the Northern District Mississippi U.S. Bankruptcy Court.

A number of private market transactions for spectrum authorities were identified by the analyst which occurred prior to the valuation date of the Report. The details of these transactions were reported in executed purchase agreements reviewed by the analyst. The record of the transactions were reviewed because they represented the actual trading environment for AMTS spectrum authorities. All the transactions were for AMTS spectrum and therefore compare with both physical and technical aspects for the radio spectrum as well as the FCC regulatory requirements for the spectrum. For the most part, the transactions involved the same type of buyers, which were energy or transportation companies, that intended to use the spectrum for private radio systems. During the review of the private market transaction data there was a clear discrepancy between the transaction price for Maritime Communications/Land Mobile spectrum sales and AMTS spectrum sales by other license holders.

For the Report, Walters & Associates, Inc. reviewed the purchase agreements of nineteen AMTS spectrum transactions engaged in by Skytel and MCLM. Walters & Associates, Inc. summarized the transaction data from each deal in an Exhibit to the Report, showing the seller, buyer, transaction date, market area, total population, calculated Per-MHz population, sale price and the Per-Pop/Per-MHz value for each deal. The Per-Pop/Per-MHz valuation metric is routinely used by valuation analysts, the Federal Communications Commission and industry analysts to compare spectrum transactions.

In determining the relative value of each transaction, Walters & Associates, Inc. calculated the Per-Pop/Per-MHz value of each transaction. For each transactions the analyst reviewed asset purchase agreements for purchase price, market area, spectrum amount and other information necessary to calculate the Per-Pop/Per-MHz value for each transaction. The analyst relied on Federal Communication Commission license filings and US Census data for population estimates of spectrum sold. The nineteen comparative transactions used in this analysis were for AMTS spectrum blocks ranging between 50 KHz and 1.0 MHz. The value for the transactions ranged between [REDACTED] Per-Pop/Per-MHz.

In reviewing the comparable data the analyst observed that there was a clear difference between the spectrum values reported for the Maritime Communication deals and the SkyTel deals. The total price for the SkyTel transactions was [REDACTED] and the total MHz population from all the transactions was calculated to be 5.3 million. The Per-Pop/Per-MHz value for the SkyTel spectrum deals, using the weighted valuation approach, was calculated to be [REDACTED].

The total price for the MCLM transactions was [REDACTED]. The total MHz population from all the MCLM transactions was calculated to be 11.8 million. The Per-Pop/Per-MHz value for the Maritime target spectrum, using the weighted valuation approach, was calculated to be [REDACTED].

The transaction prices for the Maritime Communications AMTS spectrum was materially less than that observed in the SkyTel transactions. The mix of market size between the SkyTel and MCLM transactions, however, were reasonably comparable. The primary difference between the transactions involving the MCLM and the SkyTel spectrum was the fact that the SkyTel transaction were not subject to an FCC investigation. As such, the Skytel transactions were approved by the FCC and the spectrum was transferred to the buyer.

In the case of the MCLM transactions, all were negotiated during the period of time in which the FCC was investigating the veracity of claims by MCLM as to the construction of its AMTS fixed license authorities it had filed with the Commission as well as representations the company made to the Commission in its auction filings for a small business discount. As such, none of the MCLM license transfers had been approved by the FCC, and no assurance could be provided by MCLM that such a license transfer was guaranteed. In fact, provisions were contained in MCLM purchase agreements to deal with this possibility.

In its valuation Report for the Court, Walters & Associates, Inc. did not include the MCLM transaction data in calculating its estimate of the current fair market value of AMTS spectrum for the Bankruptcy Court. Walters & Associates, Inc. observed that the value of MCLM spectrum based on its sales transactions was compromised by the fact that the licenses authorities were not freely transferable because of the FCC hold on their transfer. Walters & Associates, Inc. concluded in its Report that transaction data from the MCLM deals was not useful in determining the current fair market value of AMTS spectrum. As such, the Court withheld approval of MCLM transactions that did not approach the estimate of fair market determined from the freely traded comparative sales data derived from the freely traded SkyTel transactions.

The valuation Report prepared for the Court by Walters & Associates, Inc. provided clear evidence that the uncertainty in the FCC regulatory status of a licensee, such as MCLM, results in the spectrum trading at a substantial discount to its actual fair market value. The record of the MCLM negotiated transactions demonstrated that the marketplace recognized the risk of FCC regulatory uncertainty and that knowledgeable buyers had taken this into account in negotiating a purchase price. MCLM as the seller, was forced to take this reality into account and was forced to negotiate accordingly.

The relative value difference between freely traded AMTS spectrum and AMTS spectrum which was subject to regulatory uncertainty was observable and measurable. The weighted average for MCLM AMTS spectrum transactions subject to future FCC regulatory rulings were calculated to be [REDACTED] Per-Pop/Per-MHz. The weighted average for the freely traded SkyTel AMTS spectrum was calculated to be [REDACTED] Per-Pop/Per-MHz. The MCLM transactions were negotiated at an average price of [REDACTED] Per-Pop/Per-MHz, which constituted a [REDACTED] discount to the F fair market value of freely traded AMTS spectrum.

Puget Sound Energy Transaction

Walters & Associates, Inc. demonstrated in Mississippi U.S. Bankruptcy Court the value difference between freely traded AMTS spectrum and AMTS spectrum which was subject to regulatory uncertainty. Walters & Associates, Inc. provided marketplace evidence to demonstrate that the fair market value of AMTS is reduced due to regulatory uncertainty. As part of the case, Walters & Associates, Inc. analyzed the Puget Sound Energy transaction. This transaction was unique in that both parties, MCLM and SkyTel, were negotiating with Puget Sound Energy for the sale of AMTS spectrum which both companies claimed. This sale provided the Court with additional evidence of the impact of regulatory uncertainty on the value of AMTS spectrum.

In May, 2010 Puget Sound Energy, Inc. entered into a purchase agreement with Environmentel, LLC and Skybridge Spectrum Foundation for geographic AMTS spectrum authorities serving areas in the central part of the State of Washington. At the same time, Puget Sound Energy entered into an agreement with MCLM to purchase fixed site AMTS license authorities operating in the same geographic region as the SkyTel license authorities. The ownership claims of both MCLM and SkyTel for the spectrum targeted by Puget Sound Energy were being decided by the FCC.

By negotiating separate deals with both parties, Puget Sound Energy gained full control of the spectrum within the geographic region regardless of the FCC regulatory outcome. From the buyers perspective, any resolution by the FCC or the Courts favoring MCLM and SkyTel would not impact their claim to the spectrum.

The purchase price for the MCLM fixed license authorities was [REDACTED]. The purchase price for the SkyTel spectrum was [REDACTED]. The total purchase price, adjusted to a Per-Pop/Per-MHz basis, for the MCLM spectrum was calculated to be [REDACTED]. The total purchase for the SkyTel transaction, adjusted to a Per-Pop/Per-MHz basis, was calculated to be [REDACTED].

The total combined purchase price for the coverage areas shared by MCLM and Skytel spectrum authorities was calculated to be [REDACTED]. The combined total MHz Pops for the two deals was 1 million. The total purchase price, adjusted to a Per-Pop/Per-MHz basis, for the combined MCLM and SkyTel transactions was calculated to be [REDACTED].

From the buyers perspective, Puget Sound Energy was able to eliminate any uncertainty associated with the ongoing litigation and FCC deliberations regarding the MCLM spectrum and obtain spectrum rights to 100.0% of the coverage area, regardless of what happened to MCLM. In its negotiations with MCLM and SkyTel, Puget Sound considered its options and negotiated accordingly. The total purchase price paid by Puget Sound in the transaction for both the SkyTel and MCLM spectrum was [REDACTED] for a total of 3.1 million MHz Pops. The overall fair market value of the spectrum subject to the transaction, on a Per-Pop/MHz basis was [REDACTED].

The Puget Sound transaction provides clear evidence that uncertainty in the FCC regulatory status of a licensee, such as MCLM, results in the spectrum trading at a substantial discount to its actual fair market value. The Puget Sound Energy transaction was conducted with the full knowledge of both parties that MCLM licenses were subject to an impending dismissal by the FCC, which was subsequently ordered. The total purchase price for the MCLM spectrum, adjusted to a Per-Pop/Per-MHz basis, was calculated to be [REDACTED], well below the actual fair market value of the market area AMTS spectrum, which was [REDACTED] Per-Pop/MHz.

The payment made by Puget Sound Energy to MCLM for its spectrum can be used to measure the discount, relative to fair market value, a marketplace participant, in this case Puget Sound Energy, will pay for spectrum compromised by FCC regulatory uncertainty. For MCLM, Puget Sound paid [REDACTED] for access to its spectrum rights, which constitutes a [REDACTED] discount to the actual fair market value of the spectrum of [REDACTED] Per-Pop/MHz.

Portland General Electric

Walters & Associates, Inc. has reviewed the document record of the ongoing negotiations with Portland General Electric, which is seeking to purchase AMTS spectrum from the Managed Entities. The Leong Public Filings, including filings with the and Federal Communications Commission (FCC) and wrongful disclosures of confidential information in the Alameda County Court have become public. As a result of these public disclosures, purchase negotiations between Mr. Havens and Portland General Electric changed dramatically to the detriment of the Managed Entities.

In early 2015, the Portland General Electric (PGE) company became interested in purchasing AMTS spectrum from entities controlled by Managed Entities. In an e-mail to Warren Havens on February 17, 2015 PGE, provided Mr. Havens with files containing a listing of the service territories and counties in which the company was seeking AMTS spectrum. The PGE e-mail also contained details on the specific AMTS spectrum it sought. PGE also asked Mr. Havens to inform them about the amount of spectrum he would be willing to sell to the company. In subsequent e-mails, PGE indicated that it was aware of the regulatory issues involving MCLM and its claims to retain site based licenses on the AMTS A Block spectrum in the Portland metro area. Because of the unresolved regulatory issues, PGE stated it was not interested in using the Havens A Block spectrum, which were subject to the FCC review. PGE informed Havens that it was only interested in purchasing B Block AMTS spectrum in its Portland service areas.

Several months passed without an agreement on the AMTS spectrum. In July of 2015, PGE notified Mr. Havens that they remained interested in purchasing B Block spectrum in several counties in Oregon, Washington and California. Mr. Havens responded on August 3, 2015 with a price proposal that contained a number of options for both A and B Block spectrum in the Portland market area. The undiscounted offer for the B Block spectrum was approximately [REDACTED] and the undiscounted A Block spectrum was offered for [REDACTED]. The Havens offer included a [REDACTED] for timely acceptance of the offer and deposit guarantees of 10.0%. The discounted offer for the B Block spectrum was approximately [REDACTED] and the

undiscounted A Block spectrum was offered for [REDACTED]. On August 4, 2015 PGE responded in an e-mail that they thought the pricing was "a bit higher than we had anticipated". PGE's main complaint, however, regarded the A Block pricing saying they had expected the A Block pricing to be "quite a bit lower due to the legal issues"¹. On August 11, 2015 PGE sent Havens an e-mail indicating that they were close to making a counter offer for the spectrum.

On August 14, 2015, however, PGE notified Mr. Havens that they had become aware of the Alameda County Court filing. According to the e-mail, "The events of Tuesday in the Alameda County Courts have raised concerns within our team, legal counsel, and Sr. Management. We are working to understand the impact of that ruling has on any transaction that may occur between our companies. Until we are comfortable with the situation we will not be submitting a counter offer to your earlier proposal."

On September 14, 2015, PGE sent Warren Haven a letter with its proposal for the purchase of 1 MHz of B Block spectrum for its specified market areas. The total cash offer by PGE for the B Block spectrum was [REDACTED]. In the offer transmittal e-mail, PGE explained its concerns about the Alameda County situation. "The events of the Alameda County Courts regarding receivership had raised concerns within our team so we placed conversations on hold to better understand the potential impact to a potential transaction. We submit this proposal in order to determine if we are in the ball park as to certain key terms. If we are, then we can discuss addressing any complication or issues that arise due to the Alameda County court proceeding and other regulatory issues, depending upon the status of the court regulatory proceedings."

The public disclosure of Alameda County Court issue dramatically impacted the price negotiations for the purchase of the B Block spectrum. Prior to the Alameda County issue, the parties were close to a deal on the B Block offering price, being only a "bit" off, as described above. After learning of the Alameda County proceedings PGE proposed a dramatic reduction in the proposed purchase price of the B Block spectrum. The original offered price for the B-Block spectrum, with purchase inducements offered by the seller was [REDACTED]. The [REDACTED] counter offer represents a 70% reduction of the original [REDACTED] offer price. This drastic reduction to the original offer price was reported by PGE to be directly attributable to the creation of heretofore absent FCC regulatory risks. The uncertainty created by the public disclosure of confidential corporate and FCC communications in the Alameda County Court proceeding introduced by the Leong Public Filings resulted in an almost immediate price reduction of 75% to the likely fair market value of the AMTS B Block spectrum.

Other Evidence of Adverse Impacts

I have also reviewed evidence of particular cases where the Leong Public Filings have become known by parties in the market and have had a dramatic adverse affect on what those parties are offering to pay the Managed Entities to purchase some of the licensees spectrum. The examples include Portland General Electric (a reduction of well over 60%). The management of

¹ The A Block is subject to claims by Maritime Communications/Land Mobile, LLC of valid incumbent stations, and those claims and the Managed Entities challenges thereto, are subject to the FCC hearing in Docket 11-71.

the Managed Entities has also informed me that through an investment banker Google offered

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approximately [REDACTED] for the LMS licenses, noting that the offer should be considered prior to a hearing on a receivership Leong was seeking in Court. The management of the Managed Entities has informed me that the investment banker spoke with the Managed Entities legal counsel and stated that, as often happens, an initial offer may be improved, but on the other hand, the investment banker emphasized that time was of the essence based on the Leong Court actions. This Google offer represents approximately 1/3 of the conservative fair market valuation, if the investment banker only meant the Telesaurus Holdings GB, LLC LMS licenses. The management of the Managed Entities has also provided another example that involves an attorney representing Northwestern Energy, which submitted a filing before the FCC referring to the Leong Court action and informing the FCC that the California Court had ordered the licenses of the Managed Entities into a receivership, and that discussions were already taking place with a receiver that affected the Nevada Court actions by Environmental LLC, to obtain specific performance by, and damages against, Thomas Kurian regarding the contract between Environmental LLC and Mr. Kurian, to obtain from Mr. Kurian a highly valuable geographic license for the "Mountain" region of the United States. The managed Entities management also informed me that the attorney for Thomas Kurian has already used the Leong Public Filings against Environmental LLC in the Nevada Court litigation.

License Value In Presence of Leong Public Filings

Walters & Associates, Inc. has demonstrated herein the impact of FCC regulatory uncertainty on the value of spectrum in the marketplace. Walters & Associates, Inc. has relied on the facts, observations and evidence in both litigation proceedings and in private market spectrum negotiations to determine the appropriate discount factor to measure the loss of value to the Managed Entities license authorities by the Leong Public Filings.

The relative value difference between freely traded AMTS spectrum and AMTS spectrum subject to regulatory uncertainty in the Mississippi Bankruptcy case was shown to be 74.0%. Our analysis of the MCLM and Puget Sound deal in the same case constituted a 79% discount to the actual fair market value of freely traded AMTS spectrum. The PGE private market purchase price negotiations were reduced by 75% following the uncertainty created by the public disclosure of confidential corporate and FCC communications in the Alameda County Court proceeding.

Walters & Associates, Inc. has reviewed and analyzed herein actual market evidence that has demonstrated the impact of FCC regulatory uncertainty on the value of spectrum in the marketplace. The market reduction to fair market value demonstrated herein ranged between 66% and 79%. In assessing the loss of license value of the Managed Entities attributable to the Leong Public Filings, we have relied on actual marketplace transactions as well as direct evidence of recent price negotiations for the purchase of spectrum subject to this analysis.

Walters & Associates has concluded that the Leong Public Filings have demonstrably impacted the value of AMTS spectrum in private market negotiations. In addition, the Leong Public Filings have negatively impacted the marketplace value of all license authorities controlled by the Managed Entities, and puts into jeopardy the active status of all the existing license authorities. We conclude that the current fair market value of the Managed Entities license authorities in the presence of the Leong Public Filings constitutes between 50% and 75% of the value of the license authorities in the absence of the Leong Public Filings. The value to the Managed Entities in the presence of the Leong Public Filings is estimated to be between [REDACTED], as shown in Exhibit II.

EXHIBIT II
LICENSE VALUE IN PRESENCE OF LEONG PUBLIC FILINGS

	<u>Total License Value in Thousands</u>	<u>Total License Value in Thousands</u>
Total AMTS Service License Value		
Total LMS Service License Value		
Total VPC Service License Value		
Total 220-222 MHz Service License Value		
Total Part 22 Paging License Value		
Total Estimated License Value Range 50% to 75%:		

Discounts to license values. See Exhibit I and see text.

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QUALIFICATIONS OF CHARLES E. WALTERS, ASA

Charles E. Walters, ASA is President of C.E. Walters & Associates, Inc. (d/b/a Walters & Associates, Inc., "W&A"), a financial consulting firm specializing in the valuation of telecommunications businesses. Mr. Walters has been actively involved in the valuation of broadcast, cable television, cellular telephone, internet, satellite, paging, fixed wireless and other communications properties since 1978. He has participated in the field survey and appraisal of over 2,000 broadcast, cable television and mobile communications facilities. Mr. Walters began his career as an engineering associate with Frazier, Gross & Clay, a leading broadcast industry valuation company, where he participated in the appraisals of radio and television companies for major United States broadcast companies. Prior to establishing Walters & Associates, Inc., Mr. Walters served as a Vice President with Broadcast Investment Analysts Frazier, Gross & Kadlec ("BIA/FGK"), where he directed the company's valuation consulting group for non-broadcast industries. Mr. Walters was instrumental in developing the valuation methodology for Federal Communication Commission (FCC) license valuations. This valuation approach was accepted in the Jefferson-Pilot Corporation FCC license amortization case decided by the U.S. Tax Court on April 14, 1992. Mr. Walters has advised Federal Communications Commission, National Telecommunications and Information Administration and United States Department of Treasury personnel on telecommunications business and spectrum valuation issues. Mr. Walters has also provided expert testimony before the U.S. Tax Court, U.S. Bankruptcy Court, State and Federal Courts, the Federal Trade Commission and served as an expert valuation witness for the Internal Revenue Service.

Major valuation projects Mr. Walters has taken responsibility for include: WideOpenWest's acquisition of Ameritech's cable television properties; Sprint-Nextel's acquisition of WorldCom's tower assets; NBC's satellite distribution network; Capital Cities' acquisition of CableCom-General; Citibank's valuation of Cable News Network (CNN) and WTBS prior to loan commitment and the valuation of cable acquisitions for RCN, Commonwealth Telephone, Palmer, Fairbanks, Corinthian Broadcasting, Westinghouse Broadcasting and Cable and Telecast Broadcasting. Other projects include the valuation of XM Satellite's FCC license authorities for FCC Capital; Bell South Telecommunication's valuation of its paging properties; Ameritech Corporation's valuation of CyberTel, Inc.'s paging and cellular FCC licenses; valuation of Southwestern Bell paging and cellular properties; valuation of CTEC Corporation's cellular licenses and intangible assets; valuation of Salem Communications' broadcast properties and valuation of United States Cellular Corporation's cellular properties. Mr. Walters has also provided expert testimony regarding valuation issues before the United States Tax Court, in United States Bankruptcy Court, before the Federal Trade Commission and in State and Federal Courts. He has appeared on various communications industry panels having addressed the membership of INTELSAT on the economics of small earth stations for voice and data communications and the Telocator and the American SMR Network industry associations on various tax and valuation related issues. Mr. Walters has also published numerous articles in trade publications regarding tax and valuation issues relating to the communications industry.

Mr. Walters is a graduate of Antioch College with a B.A. in Communications. He has completed courses in Accounting and Business Law at Georgetown University Graduate Business School. Mr. Walters is a Member of the American Society of Appraisers and has attained the status of Accredited Senior Appraiser (ASA) in the Business Valuation discipline with a specialty designation in the valuation of Intangible Assets. He holds a FCC First Class Radio Telephone License and is certified by the Society of Broadcast Engineers for both radio and television. Mr. Walters was Honorably Discharged from the U. S. Marine Corps in 1969.

DECLARATION OF WARREN HAVENS IN SUPPORT OF MOTION TO
TERMINATE RECEIVERSHIP

EXHIBIT 2



<https://www.navigantresearch.com/blog/no-love-for-utilities-in-fcc-spectrum-auctions>

No Love for Utilities in FCC Spectrum Auctions

Richelle Elberg — November 26, 2014

As a wireless industry analyst who spent years following the FCC's monetization of spectrum via competitive auctions, I've been struck by the dramatic increase in spectrum values implied by the ongoing Advanced Wireless Services (AWS) Auction in Washington, D.C.

The sale of more than 1,600 licenses nationwide, which began November 13, has now raised more than \$38 billion – a tally that has risen by more than \$2 billion since I started writing this blog! That's 2 to 3 times the total analysts were calling for prior to the sale and implies values of more than **\$2** per megahertz per population unit (MHz POP) for paired licenses; some large markets are already going for **\$5** per MHz POP.

(Value per MHz POP is a metric commonly used to compare the values of various spectrum licenses; it is equal to the price of the license divided by the total number of MHz for a given license divided by the population of the licensed market. Paired licenses come with two swaths of spectrum, one each for uplink and downlink, and are typically more valuable than unpaired licenses, which have only one spectrum swath. For detail on the licenses currently up for sale, [click here](#).)

To put that in perspective, in the last major spectrum auction, held in **2008**, spectrum values leveled off at **\$1.22** per MHz POP. And while the bidding is blind – we don't know which companies currently hold the top slot for which licenses – rest assured that Verizon and AT&T are near the top of that list. Smartphone penetration and data usage have grown stunningly over the past 6 years, and the top wireless carriers are willing to pay (almost) any price to ensure they can continue to meet demand. Without adequate spectrum, they simply won't be able to keep up.

What about the Grid?

In my current role, as a smart grid communications analyst, I can't help but wonder what happened to the FCC's oft-discussed plans to allocate spectrum to electric utilities for smart grid connectivity. Proceeds from the current auction will go to support build out of a nationwide public safety communications network at 700 MHz; public safety

End of Part 1 of 2, of Exhibit 2b